

105th Congress, 2d Session - - - - - House Document 105-272

PROPOSED LEGISLATION: INTERNATIONAL CRIME
CONTROL ACT OF 1998

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO DETER AND PUNISH
INTERNATIONAL CRIME, TO PROTECT UNITED STATES NATION-
ALS AND INTERESTS AT HOME AND ABROAD, AND TO PROMOTE
GLOBAL COOPERATION AGAINST INTERNATIONAL CRIME



JUNE 9, 1998.—Message and accompanying papers referred to the Committees on the Judiciary, International Relations, Ways and Means, Commerce, Transportation and Infrastructure, Banking and Financial Services, and Government Reform and Oversight and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

59-011

WASHINGTON : 1998

To the Congress of the United States:

I am transmitting for immediate consideration and enactment the “International Crime Control Act of 1998” (ICCA). The ICCA is one of the foremost initiatives highlighted in my Administration’s International Crime Control Strategy, which I announced on May 12, 1998. The proposed legislation would substantially improve the ability of U.S. law enforcement agencies to investigate and prosecute international criminals, seize their money and assets, intercept them at our borders, and prevent them from striking at our people and institutions.

Advances in technology, the resurgence of democracy, and the lowering of global political and economic barriers have brought increased freedom and higher living standards to countries around the world, including our own. However, these changes have also provided new opportunities for international criminals trafficking in drugs, firearms, weapons of mass destruction, and human beings, and engaging in fraud, theft, extortion, and terrorism.

In response to these formidable threats to the American people, I have directed the Departments of Justice, State, and the Treasury, as well as the Federal law enforcement and intelligence communities, to intensify their ongoing efforts to combat international crime. In order to carry out this mandate most effectively, the many departments and agencies involved need the additional tools in the proposed ICCA that will enhance Federal law enforcement authority in several key areas, close gaps in existing laws, and facilitate global cooperation against international crime.

The ICCA’s provisions focus on seven essential areas to improve the Federal Government’s ability to prevent, investigate, and punish international crimes and criminals:

(1) Investigating and Punishing Acts of Violence Committed Against Americans Abroad

Broadens existing criminal law to authorize the investigation and punishment of organized crime groups who commit serious criminal acts against Americans abroad. (Current law generally requires a link to terrorist activity.)

Provides jurisdiction in the United States over violent acts committed abroad against State and local officials while in other countries on official Federal business.

(2) Strengthening U.S. Air, Land, and Sea Borders

Increases penalties for smugglers who endanger Federal law enforcement officials seeking to interdict their activities, introducing the Federal criminal offense of “portrunning” (i.e., evading border inspections, often through the use of force).

Addresses gaps in current law relating to maritime drug interdiction operations, introducing the criminal offense of failing to stop

(“heave to”) a vessel at the direction of a Coast Guard or other Federal law enforcement official seeking to board that vessel.

Provides clear authority to search international, outbound letter-class mail if there is reasonable cause to suspect that the mail contains monetary instruments, drugs, weapons of mass destruction, or merchandise mailed in violation of several enumerated statutes (including obscenity and export control laws).

Broadens the ability to prosecute criminals smuggling goods out of the United States.

(3) Denying Safe Haven to International Fugitives

Authorizes the extradition, in certain circumstances, of suspected criminals to foreign nations in two separate cases not covered by a treaty: (1) when the United States has an extradition treaty with the nation, but the applicable treaty is an outdated “list” treaty that does not cover the offense for which extradition is sought; and (2) when the United States does not have an extradition treaty with the requesting nation.

Provides for exclusion from the United States of drug traffickers and their immediate family members and of persons who attempt to enter the United States in order to avoid prosecution in another country.

(4) Seizing and Forfeiting the Assets of International Criminals

Expands the list of money laundering “predicate crimes” to include certain violent crimes, international terrorism, and bribery of public officials, thus increasing the availability of money laundering enforcement tools.

Broadens the definition of “financial institution” to include foreign banks, thereby closing a loophole involving criminally derived funds laundered through foreign banks doing business here.

Provides new tools to crack down on businesses illegally transmitting money, and to investigate money laundering under the Bank Secrecy Act.

Toughens penalties for violations of the International Emergency Economic Powers Act.

Criminalizes attempted violations of the Trading With the Enemy Act.

(5) Responding to Emerging International Crime Problems

Enhances enforcement tools for combating arms trafficking, including requiring “instant checks” of the criminal history of those acquiring explosive materials from Federal licensees and clarifying Federal authority to conduct undercover transactions subject to the Arms Export Control Act for investigative purposes.

Addresses the increasing problem of alien smuggling by authorizing the forfeiture of the proceeds and all instrumentalities of alien smuggling.

Cracks down on the international shipment of “precursor chemicals” used to manufacture illicit drugs, primarily by authorizing the Drug Enforcement Administration to require additional “end-use” verification.

Provides extraterritorial jurisdiction for fraud involving credit cards and other “access devices,” which cost U.S. businesses hundreds of millions of dollars every year.

Authorizes wiretapping for investigations of felony computer crime offenses.

(6) Promoting Global Cooperation

Expands the authority of U.S. law enforcement agencies to share the seized assets of international criminals with foreign law enforcement agencies.

Provides new authority, applicable in cases where there is no mutual legal assistance treaty provision, to transfer a person in United States Government custody to a requesting country temporarily for purposes of a criminal proceeding.

(7) Streamlining the Investigation and Prosecution of International Crime in U.S. Courts

Authorizes the Attorney General to use funds to defray translation, transportation, and other costs of State and local law enforcement agencies in cases involving fugitives or evidence overseas.

Facilitates the admission into evidence in U.S. court proceedings of certain foreign government records.

The details of this proposal are described in the enclosed section-by-section analysis. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 9, 1998.*

A BILL

To deter and punish international crime, to protect United States nationals and interests at home and abroad, and to promote global cooperation against international crime

Be it enacted by the House of Representatives and the Senate of the United States of America in Congress assembled,

Section 1. Short title; table of contents.

(a) Short title.--This Act may be cited as "The International Crime Control Act of 1998".

(b) Table of contents.--The table of contents for this Act is as follows:

Section 1. Short title; table of contents.

**TITLE I--INVESTIGATING AND PUNISHING VIOLENT CRIMES
AGAINST U.S. NATIONALS ABROAD**

Section 1001. Murder and extortion against U.S. nationals abroad in furtherance of organized crime.

Section 1002. Murder and serious assault of a state or local official abroad.

**TITLE II--STRENGTHENING THE AIR, LAND AND SEA
BORDERS OF THE UNITED STATES**

Subtitle A--Violence Committed Along U.S. Border

Section 2101. Felony punishment for violence committed along the U.S. border.

**Subtitle B -- Strengthening Maritime Law Enforcement
Along U.S. Borders**

Section 2201. Sanctions for failure to heave to, obstructing a lawful boarding, and providing false information.

Section 2202. Civil penalties to support maritime law enforcement.

Section 2203. Customs orders.

**Subtitle C -- Smuggling of Contraband and
Other Illegal Products**

- Section 2301. Smuggling contraband and other goods from the United States.
- Section 2302. Controlling illicit liquor trafficking.
- Section 2303. Customs duties.
- Section 2304. False certifications relating to exports.

TITLE III--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

**Subtitle A--Strengthening Extradition to Ensure International
Criminals Are Brought to Justice**

- Section 3101. Extradition for offenses not covered by a list treaty.
- Section 3102. Extradition absent a treaty.
- Section 3103. Technical and conforming amendments.

**Subtitle B--Strengthening Immigration Laws to Exclude
International Criminals from the United States**

- Section 3201. Exclusion of persons fleeing prosecution in other countries.
- Section 3202. Exclusion of persons involved in racketeering and arms trafficking.
- Section 3203. Exclusion of persons who have benefitted from illicit activities of drug traffickers.
- Section 3204. Exclusion of persons involved in international alien smuggling.

**Subtitle C--Additional Tools to Deny Safe Haven to
International Criminals**

- Section 3301. Temporary transfer of persons in custody for prosecution.
- Section 3302. Prohibiting fugitives from benefitting from their fugitive status.
- Section 3303. Transfer of foreign prisoners to serve sentences in country of origin.
- Section 3304. Transit of fugitives for prosecution in foreign countries.

**TITLE IV--SEIZING AND FORFEITING THE ASSETS OF
INTERNATIONAL CRIMINALS**

- Section 4001. Criminal penalties for violations of anti-money laundering orders.
- Section 4002. Border search authority for drugs, weapons, terrorist items, and monetary instruments.
- Section 4003. Forfeiture of proceeds of foreign crimes.
- Section 4004. Forfeiture of property used to commit drug crimes abroad.
- Section 4005. Forfeiture of property used to violate federal explosives laws.
- Section 4006. Cracking down on illegal money transmitting businesses.
- Section 4007. Enhancing prosecutions in international drug and money laundering cases.
- Section 4008. Seizure of assets of persons arrested abroad.
- Section 4009. Access to financial records in bank secrecy jurisdictions.
- Section 4010. Expanding civil money laundering laws to reach foreign person.
- Section 4011. Punishment of money laundering through foreign banks.
- Section 4012. Addition of serious foreign crimes to list of money laundering predicates.
- Section 4013. Authority to order convicted criminals to return property located abroad.
- Section 4014. Enforcement of foreign forfeiture judgments.
- Section 4015. Administrative summons authority under the Bank Secrecy Act.
- Section 4016. Encouraging financial institutions to notify law enforcement authorities of suspicious financial transactions.
- Section 4017. Exempting financial enforcement data from unnecessary disclosure.
- Section 4018. Criminal and civil penalties under the International Emergency Economic Powers Act.
- Section 4019. Attempted violations of the Trading With the Enemy Act.

TITLE V--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

Subtitle A--Computer and High-Tech Crime

- Section 5101. Investigating computer crime.
- Section 5102. Jurisdiction over certain financial crimes committed abroad.

Subtitle B--Alien Smuggling

Section 5201. Forfeiture for alien smuggling.

Subtitle C--Trafficking in Chemicals Used to Produce Drugs

Section 5301. Import and export of chemicals used to produce illicit drugs.

Subtitle D--Arms Trafficking

Section 5401. Enhanced tools to investigate illicit arms trafficking.

Section 5402. Background checks for purchases of explosives.

Section 5403. Prohibiting convicted felons from possessing black powder.

TITLE VI--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST INTERNATIONAL CRIME

Section 6001. Sharing proceeds of joint forfeiture operations with cooperating foreign agencies.

Section 6002. Streamlined procedures for execution of MLAT requests.

Section 6003. Temporary transfer of incarcerated witnesses.

Section 6004. Training of foreign law enforcement agencies.

Section 6005. Discretionary authority to use forfeiture proceeds to promote cooperation with foreign agencies.

TITLE VII--STREAMLINING THE INVESTIGATION AND PROSECUTION OF INTERNATIONAL CRIMES IN U.S. COURTS

Section 7001. Reimbursement of state and local law enforcement agencies in international crime cases.

Section 7002. Facilitating the admission of foreign records in U.S. courts.

Section 7003. Safe conduct for foreign witnesses testifying in U.S. courts.

Section 7004. Prohibiting fugitives from benefitting from time served abroad.

Section 7005. Suspension of statute of limitations for collection of evidence located abroad.

Section 7006. Clarification of discretionary nature of payments to informants.

**TITLE I--INVESTIGATING AND PUNISHING VIOLENT CRIMES
AGAINST U.S. NATIONALS ABROAD**

Section 1001. Murder and extortion against U.S. nationals abroad in furtherance of organized crime.

Section 2332 of title 18, United States Code, is amended--

(1) by redesignating subsection (d) as (e) and by adding a new subsection (d), as follows:

"(d) Whoever commits or attempts to commit extortion against a national of the United States, while such national is outside the United States, shall be fined under this title or imprisoned not more than twenty years, or both.";

(2) by striking the period at the end of subsection (e), as redesignated herein, and inserting ", or was intended to further the objectives of an organized criminal group. A certification under this paragraph is not subject to judicial review."; and

(3) by adding at the end the following new subsections (f) and (g):

"(f) Nothing in this section shall be construed as indicating an intent on the part of Congress to interfere with the exercise of criminal jurisdiction by the nation or nations in which the criminal act occurred or to mandate that each potential violation should be the subject of investigation or prosecution by the United States.

"(g) As used in this section, the term --

"(1) 'extortion' means the obtaining of property worth \$100,000 or more from another by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged or destroyed;

"(2) 'organized criminal group' means a group which has a hierarchical structure or is a continuing enterprise, and which is engaged in or has as a purpose the commission of an act or acts which would constitute racketeering activity as defined in section 1961 of this title, if committed within the United States.".

Section 1002. Murder and serious assaults of a State or local official abroad.

Chapter 51 of title 18, United States Code, is amended by adding a new section 1123 as follows:

"Sec. 1123. Murder or serious assault of a State or local law enforcement, judicial or other official abroad.

"(a) Whoever, in the circumstances described in subsection

(b) --

"(1) kills or attempts to kill an official of a State or a political subdivision thereof shall be punished as provided under sections 1111, 1112, and 1113 of this title; or

"(2) assaults an official of a State or a political subdivision thereof and such assault results in serious

bodily injury shall be punished as provided under section 113 of this title.

"(b) The circumstance referred to in subsection (a) is that the official of a State or political subdivision thereof --

"(1) is outside the territorial jurisdiction of the United States; and

"(2) is engaged in, or the prohibited activity occurs on account of the performance by such official, training, technical assistance, or other assistance to the United States or a foreign government in connection with any program funded, in whole or in part, by the federal government.

"(c) **Limitations on prosecution.**--No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. A determination under this paragraph is not subject to judicial review.

"(d) Nothing in this section shall be construed as indicating an intent on the part of Congress to interfere with the exercise of criminal jurisdiction by the nation or nations in which the criminal act occurred or to mandate that each potential violation should be the subject of investigation or prosecution by the United States.

"(e) **Definitions.**--For purposes of this section, --

"(1) the term 'serious bodily injury' shall have the meaning prescribed in section 2119 of this title; and

"(2) the term 'State' shall have the meaning prescribed in section 245(d) of this title.".

**TITLE II--STRENGTHENING THE AIR, LAND AND SEA BORDERS
OF THE UNITED STATES**

Subtitle A--Violence Committed Along U.S. Border

Section 2101. Felony punishment for violence committed along the U.S. border.

(a) IN GENERAL. -- Chapter 27 of title 18, United States Code, is amended by adding at the end a new section 554, as follows:

"Sec. 554. Violence while eluding inspection or during violation of arrival, reporting, entry or clearance requirements

"(a) Whoever attempts to commit or commits a crime of violence or recklessly operates any conveyance during and in relation to--

"(1) attempting to elude or eluding customs, immigration or agriculture inspection or failing to stop at the command of an officer or employee of the United States charged with enforcing the immigration, customs, or other laws of the United States along any border of the United States; or

"(2) an intentional violation of arrival, reporting, entry, or clearance requirements, as set forth in sections 150ff, 164a or 2806 of title 7, sections 431, 433, 434, or 459 of the Tariff Act of 1930

(19 United States Code sections 1431, 1433, 1434, and 1459), United States Code, sections 105 or 111 of title 21, United States Code, or section 91 of title 46, United States Code Appendix, or sections 1221, 1222, and 1224 through 1228 of title 8, United States Code; shall be fined under this title or--

"(i) imprisoned for not more than 5 years, or both;

"(ii) imprisoned for not more than 10 years, or both, if bodily injury (as defined in section 1365(g) of this title) results; or

"(iii) imprisoned for any term of years or for life, or both, if death results, and may be sentenced to death.

"(b) If two or more persons conspire to commit an offense under subsection (a), and one or more of such persons do any act to effect the object of the conspiracy, each shall be punishable as a principal, except that the sentence of death may not be imposed."

(b) CONFORMING AMENDMENT. -- The table of sections for chapter 27 of title 18, United States Code, is amended by inserting at the end:

"554. Violence while eluding inspection or during violation of arrival, reporting, entry or clearance requirements".

(c) Section 111 of title 18, United States Code, is amended by redesignating subsection (b) as subsection (c), and inserting a new subsection (b) as follows:

"(b) Reckless Endangerment.-- Whoever knowingly disregards or disobeys the lawful authority or command of any officer or employee of the United States charged with enforcing the immigration, customs or other laws of the United States along any border of the United States while engaged in or on account of the performance of official duties, and thereby endangers the safety of any person or property, shall be fined under this title or imprisoned for not more than six months, or both."

**Subtitle B -- Strengthening Maritime Law Enforcement
Along U.S. Borders**

Section 2201. Sanctions for failure to heave to, obstructing a lawful boarding, and providing false information.

(a) IN GENERAL.--Chapter 109 of title 18, United States Code, is amended by adding, at the end, new section 2237 to read as follows:

"2237. Sanctions for failure to heave to; sanctions for obstruction of boarding and providing false information

"(a)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel

subject to the jurisdiction of the United States, to fail to obey an order to heave to that vessel on being ordered to do so by an authorized Federal law enforcement officer.

"(2) It shall be unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States knowingly or willfully to --

"(A) fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel;

"(B) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any Federal law; or

"(C) provide false information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew.

"(b) This section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order a vessel to heave to.

"(c) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by international agreement or, on a case by case basis, by

radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

"(d) For purposes of this section--

"(1) A 'vessel of the United States', and a 'vessel subject to the jurisdiction of the United States' have the meaning set forth for these terms in the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903);

"(2) the term 'heave to' means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state; and

"(3) the term 'Federal law enforcement officer' has the meaning set forth in section 115 of this title.

"(e) Any person who intentionally violates the provisions of this section shall be subject to imprisoned for not more than five years, fined as provided in this title, or both.

"(f) A vessel that is used in violation of this section may be seized and forfeited. The laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures undertaken, or alleged to have been

undertaken, under any of the provisions of this section; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose. A vessel that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section."

(b) CLERICAL AMENDMENT.--The analysis at the beginning of chapter 109, title 18, United States Code, is amended by inserting the following new item after the item for section 2236:

"2237. Sanctions for failure to heave to; sanctions for obstruction of boarding or providing false information."

Section 2202. Civil penalties to support maritime law enforcement.

(a) IN GENERAL. -- Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"675. Civil penalty for failure to comply with a lawful boarding, obstruction of boarding, or providing false information

"(a) The master, operator, or person in charge of a vessel, who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel issued according to any applicable,

internationally recognized standards, or in any other manner reasonably calculated to be received and understood, shall be liable for a civil penalty of not more than \$15,000. For intentional violations of this section, a civil penalty of not more than \$25,000 may be assessed.

"(b) A vessel used to violate an order relating to the boarding of a vessel issued under the authority of section 2237 of title 18, United States Code is also liable in rem and may be seized, forfeited, and sold in accordance with Customs law, specifically section 1594 of Title 19, United States Code." .

(b) CLERICAL AMENDMENT.--The analysis at the beginning of chapter 17 of title 14, United States Code, is amended by adding at the end the following new item:

"675.Civil penalty for failure to comply with a lawful boarding, obstruction of boarding, or providing false information".

Section 2203. Customs orders.

Section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581), is amended by adding at the end the following new subsection:

"(i) As used in this section, the term 'authorized place' includes, with respect to a vessel or vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches."

**Subtitle C -- Smuggling of Contraband and
Other Illegal Products**

Section 2301. Smuggling contraband and other goods from the United States.

(a) IN GENERAL. -- Chapter 27 of title 18, United States Code, is amended by inserting the following new section:

"556. Smuggling goods from the United States

"Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title or imprisoned not more than five years, or both. The term 'United States' as used in this section shall have the same meaning as that provided in section 545 of this title."

(b) Title 18, United States Code, section 1956(c)(7)(D) is amended by inserting before "section 641 (relating to public money, property, or records)," the following: "section 556 (relating to smuggling goods from the United States),";

(c) CONFORMING AMENDMENT. -- The chapter analysis for Chapter 27 of title 18, United States Code, is amended by inserting the following at the end:

"556. Smuggling Goods from the United States"; and

(d) Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended by adding the following as new subsection:

"(d) Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the value thereof, and property used to facilitate the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be forfeited to the United States.".

Section 2302. Controlling illicit liquor trafficking.

(a) IN GENERAL. -- Title 18, United States Code, is amended-

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(1) in Section 546 by--

(A) inserting the phrase ", vehicle, aircraft, conveyance or other mode of transportation" after the word "vessel" each place that word appears;

(B) striking "if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue,";

(2) in Section 1261 by amending it to read as follows:

"The Secretary of the Treasury shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.";

(3) in section 1956(c)(7)(D) by inserting before "section 549 (relating to removing goods from Customs custody)" the following: "section 546 (relating to smuggling goods into foreign countries),"; and

(4) by inserting in chapter 59 the following new section:

"§ 1266. Trafficking in contraband liquor

"(a) It shall be unlawful for any person to ship or transport or attempt to ship or transport, or introduce or attempt to introduce, more than 360 liters of distilled spirits from one State into another State or foreign country, or receive or possess more than 360 liters of distilled spirits that have been transported in interstate or foreign commerce in violation of State or Federal law.

"(b)(1) Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than 5 years, or both; in the case of a violation involving more than 15,000 liters of distilled spirits, such person shall be

fined under this title or imprisoned not more than 10 years, or both.

"(2) The Secretary of the Treasury shall seize and forfeit, in accordance with 31 U.S.C. § 9703(o), any conveyance, liquor, or monetary instrument (as defined in 31 U.S.C. § 5312) involved in a violation of this section or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of this section.

"(3) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(4) The court, in imposing sentence on a person convicted of violating this section, shall order that person to forfeit to the United States any property described in paragraph (2) involved in such violation. The seizure and forfeiture of such property shall be governed by subsections (b), (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S. C. § 853).".

"(c) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce liquor laws, to provide for the confiscation of

liquor and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

"(d) For purposes of this section, 'State' includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States."

(b) CONFORMING AMENDMENT.--The table of sections for chapter 59, title 18, United States Code, is amended by inserting at the end:

"1266. Trafficking in contraband liquor".

Section 2303. Customs duties.

Section 542 of title 18, United States Code, is amended--

(a) by inserting at the end of the title the following: ", theft, embezzlement, or misapplication of duties";

(b) by deleting at the end of the second undesignated paragraph " - - " and inserting "; or";

(c) by inserting between the second undesignated paragraph and the undesignated paragraph that begins "Shall be fined . . . " a new undesignated paragraph as follows:

"Whoever embezzles, steals, abstracts, purloins, willfully misapplies, willfully permits to be misapplied, or wrongfully converts to his own use, or to the use of another, moneys, funds, credits, assets, securities or other property intrusted to his or her custody or care, or to the custody or

care of another for the purpose of paying any lawful duties--"

and

(d) by deleting from the undesignated paragraph beginning "Shall be fined..." the words "two years" and inserting in their place the words "five years".

Section 2304. False certifications relating to exports.

(a) IN GENERAL.--Chapter 27 of title 18, United States Code, is amended by inserting the following new section:

"555. False Certifications Relating to Exports

"Whoever knowingly transmits in interstate or foreign commerce any false or fraudulent certificate of origin, invoice, declaration, affidavit, letter, paper, or statement, whether written or otherwise, which represents explicitly or implicitly that goods, wares, or merchandise to be exported qualify for purposes of any international trade agreement to which the United States is a signatory shall be fined under this title or imprisoned not more than five years, or both."

(b) CONFORMING AMENDMENT.--The chapter analysis for Chapter 27 of title 18, United States Code, is amended by inserting the following at the end:

"555. False Certifications Relating to Exports".

TITLE III--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

**Subtitle A--Strengthening Extradition to Ensure
International Criminals Are Brought to Justice**

Section 3101. Extradition for offenses not covered by a list treaty.

Chapter 209 of title 18, United States Code, is amended by adding at the end a new section 3197, as follows:

"3197. Extradition for offenses not covered by a list treaty.

"(a) Where a foreign government makes a request for the extradition of a person who is charged with or has been convicted of an offense within its jurisdiction, and there is an extradition treaty in force between the United States and the foreign government, but the treaty does not provide for extradition for the offense with which the person has been charged or for which the person has been convicted, the Attorney General may authorize the filing of a complaint for extradition as set forth in subsections (b) and (c) below. Any such complaint shall be filed pursuant to section 3184, and the procedures of sections 3184 and 3186 and the terms of the relevant extradition treaty shall apply as if the offense were a "crime provided for by such treaty" as described in section 3184.

"(b) The Attorney General may authorize the filing of such a complaint only upon a certification--

"(1) by the Attorney General, that in the judgment of the Attorney General, the offense for which extradition is sought is a serious offense as defined in subsection (e), and submission of the extradition request would be important to the law enforcement interests of the United States or otherwise in the interests of justice; and

"(2) by the Secretary of State, that in the judgment of the Secretary of State, submission of the request would be consistent with the foreign policy interests of the United States. In making this certification the Secretary of State may consider whether the facts and circumstances of the request then known appear likely to present any significant impediment to the ultimate surrender of the person if found extraditable.

Any decision or exercise of authority by the Attorney General or the Secretary of State pursuant to this subsection is not subject to judicial review.

"(c) In cases of urgency, the Attorney General may, with the concurrence of the Secretary of State and prior to any formal certification under subsection (b), authorize the filing of a complaint seeking the provisional arrest and detention of the person sought prior to the receipt of

documents or other proof in support of the request for extradition. Any provision regarding provisional arrest in the relevant treaty shall apply. The complaint shall be filed in the same manner as provided in section 3184, and upon such complaint, the judicial officer may issue an order for the provisional arrest and detention of the person as provided in that section.

"(d) Before issuing a warrant of surrender under sections 3184 and 3186, the Secretary of State may impose conditions upon the surrender of the person, and may require such assurances of compliance with those conditions, as are deemed appropriate. In addition, the Secretary shall demand, as a condition of the person's extradition in every case, an assurance the Secretary deems satisfactory that the person shall not be tried or punished for an offense other than that for which the person has been extradited, absent the consent of the United States.

"(e) As used in this section, 'serious offense' means conduct which would be--

"(1) an offense described in any multilateral treaty to which the United States is a party that obligates parties either to extradite alleged offenders found in their territory or submit the case to their competent authorities for prosecution; or

"(2) conduct which, if it occurred in the United States, would constitute one or more of the following offenses--

"(A) a crime of violence (as defined in section 16 of this title),

"(B) the distribution, manufacture, importation or exportation of a controlled substance (as defined in section 802 of Title 21);

"(C) bribery of a public official; misappropriation, embezzlement or theft of public funds by or for the benefit of a public official;

"(D) obstruction of justice, including payment of bribes to jurors or witnesses;

"(E) the laundering of monetary instruments, as described in section 1956 of this title, provided the value of the monetary instruments involved is in excess of \$100,000;

"(F) fraud, theft, embezzlement, or commercial bribery if the property which is the object of the offense or offenses has a value in excess of \$100,000;

"(G) counterfeiting, if the obligations, securities or other items counterfeited, have an apparent value in excess of \$100,000;

"(H) a conspiracy or attempt to commit any of the foregoing offenses, or aiding and abetting a person who commits such offenses;" or

"(I) a crime against children covered by Chapter 109A and sections 2251, 2251A, 2252 and 2252A of this Title.".

Section 3102. Extradition absent a treaty.

Chapter 209 of title 18, United States Code, is amended by adding at the end a new section 3198, as follows:

"3198. Extradition absent a treaty.

"(a) Where a foreign government makes a request for the extradition of a person who is charged with or has been convicted of an offense within its jurisdiction, and there is no extradition treaty in force between the United States and the foreign government, the Attorney General may authorize the filing of a complaint for extradition as set forth in subsections (b) and (c). Any such complaint shall be filed pursuant to section 3184 and all procedures of sections 3184 and 3186 shall be followed as if the offense were a "crime provided for by such treaty" as described in section 3184.

"(b) The Attorney General may authorize the filing of such a complaint only upon a certification--

"(1) by the Attorney General, that in the judgment of the Attorney General, the offense for which extradition is sought is a serious offense as defined in subsection (i), and submission of the extradition request would be important to the law enforcement interests of the United States or otherwise in the interests of justice; and

"(2) by the Secretary of State, that in the judgment of the certifying official, based on information then known--

"(A) submission of the request would be consistent with the foreign policy interests of the United States;

"(B) the facts and circumstances of the request, including humanitarian considerations, do not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable; and

"(C) the country submitting the request is not doing so in order to try or punish the person sought based primarily on the person's race, religion, nationality, or political opinions.

The authorities and responsibilities of the Attorney General set forth in this subsection may be delegated

only to the Deputy Attorney General. The authorities and responsibilities of the Secretary of State set forth in this subsection may be delegated only to the Deputy Secretary of State. The authorities and responsibilities set forth in this subsection are not subject to judicial review.

"(c) In cases of urgency, the Attorney General may, with the concurrence of the Secretary of State and prior to any formal certification under subsection (b), authorize the filing of a complaint seeking the provisional arrest and detention of the person sought prior to the receipt of documents or other proof in support of the request for extradition. The complaint shall be filed in the same manner as provided in section 3184, and upon such complaint, the judicial officer may issue an order for the provisional arrest and detention of the person. The judicial officer may order that a person detained pursuant to this subsection be released from custody if within forty-five days of the arrest the formal request for extradition and documents in support of it are not received by the Department of State.

"(d) Upon the filing of a complaint for extradition and receipt of documents or other proof in support of the foreign government's request for extradition, the judicial officer shall hold a hearing to determine whether the person is

extraditable. The judicial officer shall find a person extraditable if the officer finds:

"(1) probable cause to believe that the person before the judicial officer is the person sought in the foreign state;

"(2) probable cause to believe that the person before the judicial officer committed the offense for which such person is sought, or was duly convicted of that offense in the requesting state; and

"(3) that the conduct upon which the request for extradition is based, if it occurred within the United States, would be a serious offense, as defined in subsection (i), punishable by imprisonment for more than ten years under the laws of the United States, the laws of the majority of the States in the United States, or the laws in the State in which the fugitive is found; and

"(4) no defense to extradition under subsection (e) has been established.

"(e) The judicial officer shall not find the person extraditable if the person has established that the offense for which extradition is sought either is an offense for which the person is being proceeded against, or has been tried or punished, in the United States, or is a political

offense. For purposes of this section a political offense does not include --

"(1) a murder or other violent crime against the person of a Head of State of a foreign state, or of a member of the Head of State's family;

"(2) an offense for which both the United States and the requesting state have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; or

"(3) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

"(f) Issues regarding humanitarian concerns, the nature of the judicial system of the requesting state, and whether the foreign state is seeking extradition of a person for the purpose of prosecuting or punishing the person because of such person's race, religion, nationality or political opinions shall not be considered by the judicial officer at the hearing, but rather shall be reserved for consideration exclusively by the Secretary of State as described above in subsection (b) (2). Notwithstanding the certification requirements described above in that subsection, the Secretary of State may, within his or her sole discretion,

consider such issues again in exercising authority to surrender the person following the procedures set forth in section 3184 and 3186, and impose conditions on surrender including those provided in subsection (g).

"(g) The Secretary of State may impose conditions upon the surrender of the person, and may require such assurances of compliance with those conditions, as are deemed appropriate. In addition, the Secretary shall demand, as a condition of the person's extradition --

"(1) in every case, an assurance the Secretary deems satisfactory that the person shall not be tried or punished for an offense other than that for which the person has been extradited, absent the consent of the United States; and

"(2) in a case in which the offense for which extradition is sought is punishable by death in the requesting state and is not so punishable under the applicable laws in the United States, an assurance the Secretary deems satisfactory that the death penalty shall not be imposed, or if imposed, shall not be carried out.

"(h) As used in this section, 'serious offense' means conduct which would be--

"(1) an offense described in any multilateral treaty to which the United States is a party that obligates parties either to extradite alleged offenders found in their territory or submit the case to their competent authorities for prosecution; or

"(2) conduct which, if it occurred in the United States, would constitute one or more of the following offenses--

"(A) a crime of violence (as defined in section 16 of this title),

"(B) the distribution, manufacture, importation or exportation of a controlled substance (as defined in section 802 of Title 21);

"(C) bribery of a public official; misappropriation, embezzlement or theft of public funds by or for the benefit of a public official;

"(D) obstruction of justice, including payment of bribes to jurors or witnesses;

"(E) the laundering of monetary instruments, as described in section 1956 of this title, provided the value of the monetary instruments involved is in excess of \$100,000;

"(F) fraud, theft, embezzlement, or commercial bribery if the property which is the

object of the offense or offenses has a value in excess of \$100,000;

"(G) counterfeiting, if the obligations, securities or other items counterfeited, have an apparent value in excess of \$100,000;

"(H) a conspiracy or attempt to commit any of the foregoing offenses, or aiding and abetting a person who commits such offenses;" or

"(I) a crime against children covered by Chapter 109A and sections 2251, 2251A, 2252 and 2252A of this Title.".

3103. Technical and conforming amendments.

(a) Section 3181 of title 18, United States Code, is amended by adding ", other than section 3197 and section 3198,".

(b) Section 3186 of title 18, United States Code, is amended by striking "or 3185" and inserting ", 3185, 3197 or 3198".

(c) the table of sections for chapter 209 of title 18, United States Code, is amended by inserting at the end:

"3197. Extradition for offenses not covered by a list treaty.

"3198. Extradition absent a treaty.".

**Subtitle B--Strengthening Immigration Laws to Exclude
International Criminals from the United States**

Section 3201. Exclusion of persons fleeing prosecution in other countries.

(a) Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding the following new subparagraph:

"(H) UNLAWFUL FLIGHT TO AVOID PROSECUTION.--Any alien who is coming to the United States solely, principally, or incidentally to avoid lawful prosecution in a foreign country for a crime involving moral turpitude (other than a purely political offense) is inadmissible."

(b) Section 241(b) of the Immigration and Nationality Act (8 U.S.C. 1231(b)) is amended by adding the following new paragraph:

"(4) ALIENS SOUGHT FOR PROSECUTION.--Notwithstanding paragraphs (1) and (2) of this subsection, any alien who is found removable under section 212(a)(2)(H) (or section 212(a)(2)(H) as applied pursuant to section 237(a)(1)(A)), shall be removed to the country seeking his or her prosecution unless, in the discretion of the Attorney General, such removal is determined to be impracticable, inadvisable, or impossible. In such case, removal shall be directed according to paragraphs (1) and (2) of this subsection."

Section 3202. Exclusion of persons involved in racketeering and arms trafficking.

(a) Section 212 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182), is amended in subsection (a) (2)-

- (1) by redesignating subparagraphs (D), (E) and (F) as subparagraphs (F), (G) and (I), respectively; and

(2) by inserting after subparagraph (C) new subparagraphs (D) and (E) to read as follows:

"(D) Racketeering activities.--Any alien who the consular officer or the Attorney General knows or has reason to believe--

"(i) is or has been engaged in activities which if engaged in within the United States would constitute 'pattern of racketeering activity' as defined in 18 U.S.C. § 1961(1) and (5), or has been a knowing assister, abettor, conspirator, or colluder with others in any such illicit activity; or

"(ii) is the spouse, son or daughter of an alien inadmissible under clause (i), has, within the previous five years, obtained any financial or other benefit from such illicit activity of that alien, and knew or reasonably should have known

that the financial or other benefit was the product of such illicit activity, is inadmissible.

"(E) Trafficking in firearms, nuclear or explosive materials.--Any alien who the consular officer or the Attorney General knows or has reason to believe --

"(i) is or has been engaged in illicit trafficking of firearms (as defined in section 921 of title 18, United States Code), nuclear materials (as defined in section 831 of title 18, United States Code), or explosive materials (as defined in section 841 of title 18, United States Code); or has been a knowing assister, abettor, conspirator, or colluder with others in such illicit activity; or

"(ii) is the spouse, son or daughter of an alien inadmissible under clause (i), has, within the previous five years, obtained any financial or other benefit from such illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible."

(b) Section 212(h) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182), is amended, in the matter preceding paragraph (1), as follows:

(1) strike "The Attorney General" through "of subsection (a) (2)"; and

(2) insert in lieu thereof: "The Attorney General may, as a matter of discretion, waive the application of subparagraphs (A) (i) (I), (B), (C) (ii), (D) (ii), E(ii), (F) and (G) of subsection (a) (2),"

(3) insert before "if--" ", and subparagraph (D) (i) of such subsection insofar as it relates to an offense other than an aggravated felony".

(c) Section 212(h) (1) (A) (i) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182), is amended by striking "(D) (i) or (D) (ii)" and inserting "(F) (i) or (F) (ii)".

Section 3203. Exclusion of persons who have benefitted from illicit activities of drug traffickers.

Section 212(a) (2) (C) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182 (a) (2) (C)), is amended to read as follows--

"(C) Controlled substance traffickers.--Any alien who the consular officer or the Attorney General knows or has reason to believe--

"(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical or listed precursor chemical (as defined in section 102 of the

Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or

"(ii) is the spouse, son or daughter of an alien inadmissible under clause (i), has, within the previous five years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible."

Section 3204. Exclusion of persons involved in international alien smuggling.

Section 212 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182), is amended:

(a) in subsection (a) (6) (E) (i) to read as follows:

"(E) SMUGGLERS.--(i) Any alien who at any time has--

"(a) knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law, or

"(b) knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter any other country and who knew or reasonably should have known that such entry or attempted entry was

likely to be in furtherance of the entry or attempted entry by such alien into the United States in violation of law,

is inadmissible.";

(b) in subsection (a) (6) (E) (ii) by adding at the end of the last sentence: "or to enter any other country in furtherance of any entry or attempted entry into the United States in violation of law"; and

(c) in subsection (d) (11) by adding at the end of the last sentence: "or to enter any other country in furtherance of an entry or attempted entry into the United States in violation of law".

**Subtitle C--Additional Tools to Deny Safe Haven to
International Criminals**

Section 3301. Temporary transfer of persons in custody for prosecution.

(a) IN GENERAL.--Chapter 306 of title 18, United States Code, is amended by inserting the following new section:

"§ 4116. Temporary Transfer for Prosecution"

"(a) When a person is in pretrial detention or is otherwise being held in custody in a foreign country based upon a violation of the law in that foreign country, and that person is found extraditable to the United States by the competent authorities of that foreign country while still in such pretrial detention or custody, the Attorney General

shall have the authority to request the temporary transfer of that person to the United States in order to face prosecution in a State or Federal criminal proceeding, to maintain the custody of such person while the person is in the United States, and to return such person to the foreign country at the conclusion of the criminal prosecution, including any imposition of sentence. The Attorney General shall make such a request only if she determines, after consultation with the Secretary of State, that the return of such person to the foreign country in question would be consistent with United States international obligations. Any decision, or exercise of authority by the Attorney General under this subsection is not subject to judicial review.

"(b) When a person is in pretrial detention or is otherwise being held in custody in the United States based upon a violation of State or Federal law, and that person is found extraditable to a foreign country while still in such pretrial detention or custody pursuant to the provisions of 18 U.S.C. § 3184, 18 U.S.C. § 3197, or 18 U.S.C. § 3198 and a determination is made by the Secretary of State and the Attorney General that such person shall be surrendered, the Attorney General shall have the authority to temporarily transfer that person to that foreign country in order to face prosecution, to transport such person from the United States

in custody, and to return such person in custody to the United States from the foreign country. When the person is being held in custody for a violation of State law, the Attorney General may exercise the authority described in this paragraph if the appropriate State authorities give their consent. The Attorney General shall make such a request only if she determines, after consultation with the Secretary of State, that the return of such person to the foreign country in question would be consistent with United States international obligations. Any decision, or exercise of authority by the Attorney General under this subsection is not subject to judicial review. With regard to persons in pretrial detention, temporary transfer under this section results in an interruption in their pretrial detention status, and the right to challenge the conditions of confinement pursuant to 18 U.S.C. § 3142(f) does not extend to the right to challenge the conditions of confinement in a foreign country while there temporarily pursuant to this section.

"(c) The Attorney General may exercise the authority described in paragraphs (a) and (b) absent a prior finding that the person in custody is extraditable, if the person, any appropriate State authorities in a case under paragraph (b), and the foreign country give their consent.

"(d) Where the temporary transfer to or from the United States of a person in custody for the purpose of prosecution is provided for by this section, that person shall be returned to the United States or to the foreign country from which the person is transferred on completion of the proceedings upon which the transfer was based. In no event shall the return of such person require extradition proceedings or proceedings under the immigration laws. In addition, notwithstanding any other provision of law, a person temporarily transferred to the United States pursuant to this section shall not be entitled to apply for or obtain any right or remedy under the Immigration and Nationality Act of 1952, as amended, including the right to apply for or be granted asylum or withholding of deportation.

"(e) For purposes of this section, 'State' includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States."

(b) CONFORMING AMENDMENT.-- The chapter analysis for Chapter 306 of title 18, United States Code, is amended by inserting the following at the end:

"4116. Temporary Transfer for Prosecution".

Section 3302. Prohibiting fugitives from benefitting from fugitive status.

(a) IN GENERAL.--Chapter 163 of Title 28, United States Code, is amended by inserting the following new section:

"§ 2468. Fugitive disentitlement

"Any person who, in order to avoid criminal prosecution, purposely leaves the jurisdiction of the United States, declines to enter or re-enter the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court where a criminal case is pending against the person may not use the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third-party proceedings in any related criminal forfeiture action. "

(b) CONFORMING AMENDMENT.--The chapter analysis for Chapter 163 of Title 28, United States Code, is amended by inserting the following at the end:

"2468. Fugitive disentitlement".

Section 3303. Transfer of foreign prisoners to serve sentences in country of origin.

Section 4100 of title 18 of the United States Code is amended in subsection (b) by inserting in the third sentence before "[A]n

offender..... the following phrase: "Unless otherwise provided by treaty, ".

Section 3304. Transit of fugitives for prosecution in foreign countries.

(a) IN GENERAL. -- Chapter 305 of title 18 of the United States Code is amended by inserting the following new section:

"§ 4087. Transit through the United States of persons wanted in a foreign country

"The Attorney General may, in consultation with the Secretary of State, permit the temporary transit through the United States of a person wanted for prosecution or imposition of sentence in a foreign country. A determination by the Attorney General to permit or not to permit such temporary transit is not subject to judicial review. When such permission is granted, Federal law enforcement personnel may hold the person in custody during such person's transit of the United States. Notwithstanding any other provision of law, persons who transit the United States pursuant to this section shall be required to have only such documents as the Attorney General shall determine, shall not be considered to be admitted or paroled into the United States, and shall not be entitled to apply for or obtain any right or remedy under the Immigration and Nationality Act of 1952, as amended,

including the right to apply for or be granted asylum or withholding of deportation."

(b) CONFORMING AMENDMENT.-- The chapter analysis for Chapter 305 of title 18 of the United States Code is amended by inserting the following at the end:

"4087. Transit through the United States of persons wanted in a foreign country".

**TITLE IV--SEIZING AND FORFEITING THE ASSETS OF
INTERNATIONAL CRIMINALS**

Section 4001. Criminal penalties for violations of anti-money laundering orders.

(a) REPORTING VIOLATIONS.-- Section 5324(a) of title 31, United States Code, is amended --

(1) by inserting ", or the reporting requirements imposed by an order issued pursuant to section 5326" before the dash that precedes paragraph (1); and

(2) in paragraphs (1) and (2), by inserting ", or a report required under any order issued pursuant to section 5326" before the semi-colon.

(b) PENALTIES.-- Sections 5321(a)(1), 5322(a) and 5322(b) of title 31, United States Code, are each amended by inserting "or order issued" after "or a regulation prescribed".

Section 4002. Border search authority for firearms, instrumentalities of terrorism and other articles.

(a) Title 19, United States Code, is amended by adding the following new section 1583:

"1583. Examination of outbound mail

"(a) For the purposes of ensuring compliance with the Customs laws and the laws enforced by the United States Customs Service, including but not limited to section 5316 of title 31 (Bank Secrecy Act), sections 1461, 1463, 1465, and 1466 of title 18 (relating to obscenity and child

pornography), section 953 of title 21 (drug smuggling), sections 2401-20 of Title 50 Appendix (Export Administration Act of 1979), section 2778 of Title 22 (Arms Export Control Act), and section 1701 et. seq. of Title 50 (International Emergency Economic Powers Act), a Customs officer may stop and search subject to the provisions of this section, at the border and without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service.

"(b) Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a customs declaration, or mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

"(c) Mail sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to subsections (d) and (e), upon reasonable cause to suspect that such mail contains monetary instruments (as defined in section 1956 of title 18); a weapon of mass destruction (as defined in section 2332a of title 19); a drug or other substance listed in schedule I, II, III, or IV in section 912 of title 21; national defense and related information transmitted in violation of 18 U.S.C. 793 to 798; any merchandise mailed in violation of sections 1715 or 1716 of title 18; merchandise mailed in violation of

chapter 71 (obscenity) of title 18; merchandise mailed in violation of sections 2401 to 2420 of title 50 Appendix (Export Administration Act of 1979); merchandise mailed in violation of section 2778 of title 22 (Arms Export Control Act); merchandise mailed in violation of section 1701 et seq. of title 50 (International Emergency Economic Powers Act); or merchandise mailed in violation of section I et seq. of title 50 Appendix (Trading With The Enemy Act).

"(d) No person acting under authority of this section shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to reading,

"(1) A search warrant has been issued pursuant to Rule 41, Federal Rules of Criminal Procedure, or

"(2) The sender or addressee has given written authorization.

"(e) The procedures for the search of mail sealed against inspection pursuant to this section shall be determined in and governed by a written agreement which shall be entered into between the Department of the Treasury and the United States Postal Service and shall provide, among other matters, for the presence of employees of each agency, including a Customs officer, at any search of such mail, at

the locations at which mail will be searched, and for avoiding any undue delay in the movement of such mail.

(b) CONFORMING AMENDMENT. Section 3623 (d) of Title 39 is amended to read as follows:

"(d) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate of each such class shall be uniform through the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee, or pursuant to Section 1583 of Title 19.

Section 4003. Forfeiture of proceeds of foreign crimes.

Section 981(a)(1)(B) of title 18, United States Code, is amended by --

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "(ii) any other conduct described in section 1956(c)(7)(B)," after "(as such term is defined for purposes of the Controlled Substances Act)".

Section 4004. Forfeiture of property used to commit drug crimes abroad.

Section 981(a)(1)(B) of title 18, United States Code, is amended by inserting ", or any property used to facilitate an offense described in subparagraph (i)" at the end before the period.

Section 4005. Forfeiture of property used to violate federal explosives laws.

(a) Section 981(a)(1) of title 18, United States Code is amended by adding at the end the following new subparagraph--

"(G) Any conveyance, chemicals, laboratory equipment, or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used to commit a violation of 18 U.S.C. 842 (a)(1), (a)(3), (b), (c), (d), (h), (i), (l), (m), and (n), and 844 (d) through (m), or a conspiracy to commit any such offense, and any property traceable to such property."

(b) Section 982(a) of title 18, United States Code is amended by adding at the end the following new paragraph:

"(6) The court, in imposing a sentence on a person convicted of an offense punishable for a violation of the Federal Explosives law, 18 U.S.C. Chapter 40, or a conspiracy to commit such an offense, shall order the person to forfeit to the United States any conveyance, chemicals, laboratory equipment, or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used to commit such offense, and any property traceable to such property."

Section 4006. Cracking down on illegal money transmitting businesses.

(a) CIVIL FORFEITURE FOR MONEY TRANSMITTING VIOLATION.--Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "or 1957" and inserting ", 1957 or 1960".

(b) SCIENTER REQUIREMENT FOR SECTION 1960 VIOLATION.--Section 1960 of title 18, United States Code, is amended by adding the following new subsection:

"(c) For the purposes of proving a violation of this section involving an illegal money transmitting business as defined in subsection (b)(1)(A), it shall be sufficient for the government to prove that the defendant knew that the money transmitting business lacked a license required by state law. It shall not be necessary

to show that the defendant knew that the operation of such a business without the required license was an offense punishable as a felony or misdemeanor under state law."

Section 4007. Enhancing prosecutions in international drug and money laundering cases.

Section 981 of title 18, United States Code, is amended by adding the following new subsection:

"(k) Rebuttable presumptions--

"(1) At the trial of an action brought pursuant to subsection (a)(1)(B), there is a presumption, governed by Rule 301 of the Federal Rules of Evidence, that the property is subject to forfeiture if the United States establishes, by a preponderance of the evidence, that such property was acquired during a period of time when the person who acquired the property was engaged in an offense against a foreign nation described in subsection (a)(1)(B) or within a reasonable time after such period, and there was no likely source for such property other than such offense.

"(2) At the trial of an action brought pursuant to subsection (a)(1)(A), there is a presumption, governed by Rule 301 of the Federal Rules of Evidence, that the property was involved in a violation of section 1956 or 1957 of this title if the United States establishes, by

a preponderance of the evidence, any 3 of the following factors:

"(A) the property constitutes or is traceable to more than \$10,000 that has been or was intended to be transported, transmitted or transferred to or from a major drug-transit country, a major illicit drug producing country, or a major money laundering country, as those terms are determined pursuant to sections 481(e) and 490(h) of the Foreign Assistance Act of 1961 (22 U.S.C. §§ 2291(e) and 2291j(h));

"(B) the transaction giving rise to the forfeiture occurred in part in a foreign country whose bank secrecy laws have rendered the United States unable to obtain records relating to the transaction by judicial process, treaty or executive agreement;

"(C) a person more than minimally involved in the transaction giving rise to the forfeiture action (i) has been convicted in any State, Federal, or foreign jurisdiction of a felony involving money laundering or the manufacture, importation, sale or distribution of a controlled

substance, or (ii) is a fugitive from prosecution for such offense; or

"(D) the transaction giving rise to the forfeiture action was conducted by, to or through a shell corporation not engaged in any legitimate business activity in the United States.

"(3) For the purposes of this paragraph, 'shell corporation' means any corporation that does not conduct any ongoing and significant commercial or manufacturing business or any other form of commercial operation.

"(4) The enumeration of presumptions in this subsection shall not preclude the development of other judicially created presumptions."

Section 4008. Seizure of assets of persons arrested abroad.

Section 981(b) of title 18, United States Code, is amended by adding the following new paragraph:

"(3) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any federal judge or magistrate judge in the district where the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days,

except that the time may be extended for good cause shown at a hearing conducted in the manner provided in Rule 43(e), Federal Rules of Civil Procedure. The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection."

Section 4009. Access to financial records in bank secrecy jurisdictions.

Section 986 of title 18, United States Code, is amended by adding the following new subsection:

"(d) In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by Section 413(n) of the Controlled Substances Act (21 U.S.C. § 853(n)), where--

"(1) financial records located in a foreign country may be material (A) to any claim or to the ability of the government to respond to such claim, or (B) in a civil forfeiture case, to the government's ability to establish the forfeitability of the property; and

"(2) it is within the capacity of the claimant to waive his or her rights under such secrecy laws, or to obtain the records him- or herself, so that the records can be made available,

the refusal of the claimant to provide the records in response to a discovery request or take the action necessary otherwise to make the records available shall result in the dismissal of the claim with prejudice. This subsection shall not affect the claimant's rights to refuse production on the basis of any privilege guaranteed by the Constitution or federal laws of the United States."

Section 4010. Expanding civil money laundering laws to reach foreign persons.

Section 1956(b) of title 18, United States Code, is amended--

(1) by redesignating the present matter as paragraph (1), and the present paragraphs (1) and (2) as sub-paragraphs (A) and (B), respectively; and

(2) by inserting the following new paragraphs:

"(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution registered in a foreign country, that commits an offense under subsection (a) involving a financial transaction that occurs in whole or in

part in the United States, provided that service of process upon such foreign person is made under the Federal Rules of Civil Procedure or the laws of the country where the foreign person is found.

"(3) The court may issue a pre-trial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section."

Section 4011. Punishment of money laundering through foreign banks.

Section 1956(c)(6) of title 18, United States Code, is amended to read as follows:

"(6) the term "financial institution" includes any financial institution described in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder, as well as any foreign bank, as defined in paragraph (7) of section 1(b) of the International Banking Act of 1978 (12 U.S.C. § 3101(7))."

Section 4012. Addition of serious foreign crimes to list of money laundering predicates.

Section 1956(c)(7) of title 18, United States Code, is amended --

(1) in subparagraph (B),

(A) by striking all of the language in clause (ii) and inserting "any act or acts constituting a crime of violence;"

(B) by adding after clause (iii) new clauses (iv) through (vii) as follows:

"(iv) fraud, or any scheme to defraud, committed against a foreign government or foreign governmental entity;

"(v) bribery of a public official, or the misappropriation, theft or embezzlement of public funds by or for the benefit of a public official;

"(vi) smuggling or export control violations involving munitions listed in the United States Munitions List or technologies with military applications as defined in the Commerce Control List of the Export Administration Regulations; or

"(vii) an offense with respect to which the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States."

(2) in subparagraph (D)

(A) by inserting "section 541 (relating to goods falsely classified)," before "section 542";

(B) by inserting "section 922(l) (relating to the unlawful importation of firearms), section 924(m) (relating to firearms trafficking)," before "section 956";

(C) by inserting "section 1030 (relating to computer fraud and abuse)," before "1032";

(D) by inserting "any felony violation of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. § 611 et seq.)," before "or any felony violation of the Foreign Corrupt Practices Act"; and

(3) in subparagraph (E), by inserting "the Clean Air Act (42 U.S.C. § 6901 et seq.)," after "the Safe Drinking Water Act (42 U.S.C. § 300f et seq.)".

Section 4013. Authority to order convicted criminals to return property located abroad.

(a) ORDER OF FORFEITURE.-- Section 413(p) of the Controlled Substances Act (21 U.S.C. § 853(p)) is amended by inserting the following at the end:

"In the case of property described in paragraph (3), the court may, in addition, order the defendant to return the property to the jurisdiction of the court so that it may be seized and forfeited."

(b) PRE-TRIAL RESTRAINING ORDER.-- Section 413(e) of the Controlled Substances Act (21 U.S.C. § 853(e)) is amended by adding the following after paragraph (3):

"(4) Pursuant to its authority to enter a pre-trial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may also order the defendant to repatriate any property subject to forfeiture pending trial, and to deposit that property in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account. Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence for the offense giving rise to the forfeiture under the obstruction of justice provision of Section 3C1.1 of the United States Sentencing Guidelines."

Section 4014. Enforcement of foreign forfeiture judgments.

(a) IN GENERAL.-- Chapter 163 of Title 28, United States Code, is amended by inserting the following new section:

"§2466. Enforcement of foreign forfeiture judgment.

"(a) Definitions. As used in this section --

"(1) "Foreign nation" shall mean a country that has become a party to the United Nations Convention Against

Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereafter "the United Nations Convention") or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance.

"(2) "Value based confiscation judgment" shall mean a final order of a foreign nation compelling a defendant, as a consequence of his or her criminal conviction for an offense described in Article 3, Paragraph 1, of the United Nations Convention, to pay a sum of money representing the proceeds of such offense, or property the value of which corresponds to such proceeds.

"(b) **Review by Attorney General.** A foreign nation seeking to have its value based confiscation judgment registered and enforced by a United States district court under this section must first submit a request to the Attorney General or his or her designee. Such request shall include:

"(1) a summary of the facts of the case and a description of the criminal proceeding which resulted in the value-based confiscation judgment;

"(2) certified copies of the judgment of conviction and value-based confiscation judgment;

"(3) an affidavit or sworn declaration establishing that the defendant received notice of the proceedings in suffi-

cient time to enable him or her to defend against the charges and that the value-based confiscation judgment rendered is in force and is not subject to appeal;

"(4) an affidavit or sworn declaration that all reasonable efforts have been undertaken to enforce the value-based confiscation judgment against the defendant's property, if any, in the foreign country; and

"(5) such additional information and evidence as may be required by the Attorney General or his or her designee.

The Attorney General or his or her designee, in consultation with the Secretary of State or his or her designee, shall determine whether to certify the request, and such decision shall be final and not subject to either judicial review or review under the Administrative Procedures Act, 5 U.S.C. § 551 et seq.

"(c) **Jurisdiction and Venue.** Where the Attorney General or his or her designee certifies a request under paragraph (b), the foreign nation may file a civil proceeding in United States district court seeking to enforce the foreign value-based confiscation judgment as if the judgment had been entered by a court in the United States. In such a proceeding, the foreign nation shall be the plaintiff and the person against whom the value-based confiscation judgment was entered shall be the defendant. Venue shall lie in the district court for the District of Columbia or in

any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found. The district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with Rule 4 of the Federal Rules of Civil Procedure.

"(d) **Entry and Enforcement of Judgment.** (1) Except as provided in paragraph (2), the district court shall enter such orders as may be necessary to enforce the value-based confiscation judgment on behalf of the foreign nation where it finds that all of the following requirements have been met:

"(A) the value-based confiscation judgment was rendered under a system which provides impartial tribunals or procedures compatible with the requirements of due process of law;

"(B) the foreign court had personal jurisdiction over the defendant;

"(C) the foreign court had jurisdiction over the subject matter;

"(D) the defendant in the proceedings in the foreign court received notice of the proceedings in sufficient time to enable him or her to defend; and

"(E) the judgment was not obtained by fraud.

Process to enforce a judgment under this section will be in accordance with Rule 69(a) of the Federal Rules of Civil Procedure.

"(e) **Finality of Foreign Findings.** Upon a finding by the district court that the conditions set forth in subsection (d) have been satisfied, the court shall be bound by the findings of facts insofar as they are stated in the foreign judgment of conviction and value-based confiscation judgment.

"(f) **Currency Conversion.** Insofar as a value based confiscation judgment requires the payment of a sum of money, the rate of exchange in effect at time when the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in the judgment submitted for registration."

(b) **CONFORMING AMENDMENT.**-- The chapter analysis for Chapter 163, Title 28, United States Code, is amended by inserting the following at the end:

"2466. Enforcement of foreign forfeiture judgment"

Section 4015. Administrative summons authority under the Bank Secrecy Act.

Section 5318(b)(1) of title 31, United States Code, is amended to read as follows:

"(1) **Scope of power.** -- The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection

(a), (i) for the purpose of determining compliance with the rules of this subchapter or any regulations issued hereunder, or (ii) for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. § 1951 et seq.) or any regulations under any such provision."

Section 4016. Encouraging financial institutions to notify law enforcement authorities of suspicious financial transactions.

(a) Section 2702(b)(6) of title 18, United States Code, is amended --

(1) by inserting "or supervisory agency" after "a law enforcement agency"; and

(2) in subparagraph (A), by striking "; and" and inserting "and appear to pertain to the commission of the crime; or"; and

(3) in subparagraph (B), by striking "appear to pertain to the commission of the crime." and inserting "appear to reveal a suspicious transaction relevant to a possible violation of law or regulation."

(b) Section 2711 of title 18, United States Code, is amended --

(1) in paragraph (1), by striking ";" and inserting "; and";

(2) in paragraph (2), by striking "." and inserting "; and";

and

(3) by adding at the end the following new paragraphs:

"(3) the terms 'suspicious transaction' and 'relevant to a possible violation of the law or regulation' shall be interpreted in the same manner as those terms have been interpreted for purposes of Section 5318(g) of title 31, United States Code.

"(4) the term 'supervisory agency' has the meaning set forth in Section 1101(7) of the Right to Financial Privacy Act of 1978."

Section 4017. Exempting financial enforcement data from unnecessary disclosure.

(a) Section 203 of the International Emergency Powers Act (50 U.S.C. 1702(a)), is amended--

(1) by redesignating paragraph (3) as paragraph (4),

(2) and by inserting after paragraph (2) the following new paragraph:

"(3) Exemptions From Disclosure.-- Information obtained under this title before or after the enactment of this section may be withheld only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with any transaction prohibited under this title, including license applications, licenses or other authorizations, information or evidence obtained in the course of any

investigation, and information obtained or furnished under this title in connection with international agreements, treaties, or obligations shall be withheld from public disclosure, and shall not be subject to disclosure under section 552 of title 5, United States Code, unless the release of such information is determined by the President to be in the national interest."

(b) Section 5(b) of the Trading with the Enemy Act (50 U.S.C.App. 5(b)) is amended--

(1) by redesignating paragraphs (2), (3) and (4) as paragraphs (3), (4) and (5), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) Exemptions from disclosure.--Information obtained under this title before or after the enactment of this section may be withheld only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with any transaction prohibited under this title, including license applications, licenses or other authorizations, information or evidence obtained in the course of any investigation, and information obtained or furnished under this title in connection with international

agreements, treaties, or obligations shall be withheld from public disclosure, and shall not be subject to disclosure under section 552 of title 5, United States Code, unless the release of such information is determined by the President to be in the national interest."

Section 4018. Criminal and civil penalties under the International Emergency Economic Powers Act.

(a) INCREASED CIVIL PENALTY.--Section 206(a) of the International Emergency Economic Powers Act (50 U.S.C. 1705(a)), is amended by replacing "\$10,000" with "\$50,000".

(b) INCREASED CRIMINAL FINE.--Section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1705(b)), is amended to read as follows:

"(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall be fined not more than \$1,000,000 if an organization (as defined in section 18 of title 18, United States Code), and not more than \$250,000 or imprisoned for not more than ten years, or both, if an individual."

Section 4019. Attempted violations of the Trading With the Enemy Act.

Section 16 of the Trading with the Enemy Act (50 U.S.C.App. 16) is amended--

(a) by inserting in subsection (a) "or attempt to violate" after "violate" each time it appears; and

(b) by inserting in subsection (b)(1) "or attempts to violate" after "violates".

TITLE V--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

Subtitle A--Computer and High-Tech Crime

Section 5101. Enhanced authority to investigate computer fraud and attacks on computer systems.

Section 2516(1)(c) of title 18, United States Code, is amended by inserting before "or section 1992 (relating to wrecking trains)" the following: "a felony violation of section 1030 (relating to computer fraud and attacks on computer systems)".

Section 5102. Jurisdiction over certain financial crimes committed abroad.

Section 1029 of title 18, United States Code, is amended -by adding at the end a new paragraph (g) as follows:

"(g) Any person who, outside the jurisdiction of the United States, engages in any act which, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the same penalties as if that offense had been committed in the United States, if the act --

"(1) involves an access device issued, owned, managed or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

"(2) causes, or if completed would have caused, a transfer of funds from or a loss to an entity listed in paragraph (1).".

Subtitle B--Alien Smuggling

Section 5201. Forfeiture for alien smuggling.

(a) CIVIL FORFEITURE.-- Section 274(b) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1324(b)), is further amended--

(1) by amending paragraphs (1) and (2) to read as follows:

"(b) SEIZURE AND FORFEITURE.

"(1) The following property shall be subject to seizure and forfeiture:

(A) any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a); and

(B) any property, real or personal, (i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or (ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of subsection (a).

"(2) Any property subject to forfeiture to the United States under this section may be seized by the

Attorney General in the manner set forth in Section 981(b) of title 18, United States Code."; and

(2) in paragraphs (4) and (5) by striking "a conveyance" and "conveyance" each place the phrase or word appears and inserting "property".

(b) CRIMINAL FORFEITURE.-- Section 274 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1324) is further amended by redesignating subsection (c) to be subsection (d) and inserting the following new subsection (c) --

"(c) Criminal forfeiture

"(1) Any person convicted of a violation of subsection (a) shall forfeit to the United States, irrespective of any provision of State law --

"(A) any conveyance, including any vessel, vehicle, or aircraft used in the commission of a violation of subsection (a) and

"(B) any property real or personal, (i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or (ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of subsection (a).

The court, in imposing sentence on such person, shall order that the person forfeit to the United States all property described in this subsection.

"(2) The criminal forfeiture of property under this subsection, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853), except for subsection 413(d) which shall not apply to forfeitures under this subsection.

Subtitle C--Trafficking in Chemicals Used to Produce Drugs

Section 5301. Import and export of chemicals used to produce illicit drugs.

(a) Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended-

(1) by amending subsection (a) to read as follows:

"(a) Each person who proposes to engage in a transaction involving the importation or exportation of a listed chemical which requires advance notification pursuant to the regulations of the Attorney General or the importation or exportation of a tableting machine or an encapsulating machine shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction

is to take place in such form and supplying such information as the Attorney General shall require by regulation; in the case of an importation for transfer or transshipment pursuant to section 1004 of this title, such notice will be made as provided in that section.";

(2) in subsection (c) (1)--

(A) by striking the phrase "(other than a regulated transaction to which the requirement of subsection (a) of this section does not apply by reason of subsection (b) of this section)";

(B) by inserting ", a tableting machine or an encapsulating machine" after "a listed chemical"; and

(C) by inserting ",tableting machine, or encapsulating machine" after "the chemical"; and

(3) in subsection (e)--

(A) by redesignating paragraphs "(2)" and "(3)" as paragraphs "(4)" and "(5)", respectively;

(B) by inserting new paragraphs (2) and (3) as follows:

"(2) The Attorney General may by regulation require that the 15 day notification requirement of subsection (a) apply to all imports of a listed chemical, regardless of the status of certain importers of that

listed chemical as regular importers, if the Attorney General finds that such notification is necessary to support effective chemical diversion control programs or is required by treaty or other international agreement to which the United States is a party."

"(3) The Attorney General may require that the notification requirement of subsection (a) for certain importations or exportations, including those subject to section 1004 of this title, include additional information to enable a determination to be made that the listed chemical being imported or exported will be used for a legitimate purpose or when such information is needed to satisfy requirements of the importing or exporting country. The Attorney General will provide notice of these additional requirements specifically identifying the listed chemicals and countries involved.

(b) Section 1004 of the Controlled Substances Import and Export Act (21 U.S.C. 954) is amended by striking the current text in its entirety and replacing it with the following--

§ 954. Transshipment and in-transit shipment of controlled substances

"(a) Notwithstanding sections 952, 953, 957 and 971 of this title, except as provided below, --

"(1) A controlled substance in schedule I may be imported into the United States--

"(A) for transshipment to another country, or

"(B) for transference or transshipment from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation, if and only if (i) evidence is furnished which enables the Attorney General to determine that the substance being so imported, transferred, or transshipped will be used for scientific, medical, or other legitimate purposes in the country of destination, and (ii) it is so imported, transferred, or transshipped with the prior written approval of the Attorney General (which shall be granted or denied within 21 days of the request) based on a determination that the requirements of this section and the applicable subsections of sections 952 and 953 have been satisfied.

"(2) A controlled substance in schedule II, III, or IV or a listed chemical may be so imported, transferred, or transshipped if and only evidence is furnished which enables

the Attorney General to determine that the substance or chemical being so imported, transferred, or transshipped will be used for scientific, medical, or other legitimate purposes in the country of destination and (ii) advance notification is given to the Attorney General not later than 15 days prior to the exportation of the substance or chemical from the foreign port of embarkation (the notification period for imports other than for transfer or transshipment pursuant to section 1002 or 1018 of this title is not affected by this subsection). Such notification shall be in such form and contain such information as the Attorney General may require by regulation.

"(b)(1) Any such importation, transfer or transshipment of a controlled substance shall be subject to the applicable subsections of sections 1002 and 1003 of this title. The importation, transfer, transshipment or exportation of any controlled substance may be suspended on the ground that the controlled substance may be diverted to other than scientific, medical or other legitimate purposes.

"(2) Any such importation, transfer or transshipment of a listed chemical shall be subject to all the requirements of section 1018 of this title, except that in no case shall the 15 day advance notification requirement be waived. The importation, transfer, transshipment or exportation of a

listed chemical may be suspended on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance.

"(3) Any such importation, transfer or transshipment of a controlled substance or listed chemical may be suspended if any requirement of subsection (a) is not satisfied. The Attorney General may withdraw a suspension order issued under this paragraph if (A) the requirements of subsection (a) are ultimately satisfied and (B) no grounds exist under paragraphs (1) or (2) of this subsection to suspend the shipment.

"(c) The suspension of any exportation of a controlled substance or listed chemical will be subject to the procedures and requirements established in section 1018(c) of this title.

"(d) Any shipment of a controlled substance or listed chemical which has been imported or is subject to the jurisdiction of the United States whose importation, transfer, transshipment or exportation has been suspended may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any such controlled substance or listed chemical until the suspension order becomes final. However, a court, upon application therefor, may at any time order the sale of a perishable controlled substance or listed chemical. Any such order shall require the deposit of the proceeds of the sale with

the court. Upon a suspension order becoming final, the shipment may be disposed of as follows, at the discretion of the Attorney General and subject to such conditions as the Attorney General may impose,--

"(1) The title holder may be allowed to return the shipment to any of the original exporter's facilities in the country of exportation;

"(2) The shipment may be exported, subject to the requirements of section 1003 or 1018 of this title, as appropriate, to a new consignee;

"(3) The shipment may be surrendered to the Attorney General for appropriate disposition; all costs associated with this disposition will be the responsibility of the title holder, however if there are any proceeds from the disposition, these will be applied to the repayment of the costs and any excess proceeds will be returned to the titleholder;

"(4) If sufficient cause exists, the shipment of controlled substances or listed chemicals (or proceeds of sale deposited in court) may be forfeited to the United States pursuant to section 511 of Title II and may be disposed of in accordance with that section.

"Nothing in this section may be used by any party to defend against a forfeiture action against a shipment of controlled

substances or listed chemicals initiated by the United States or by any state. This section does not affect the liability of any party for storage and transportation costs incurred by the Government as a result of the suspension of a shipment."

(c) Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended--

(1) by redesignating paragraphs "(5)" , "(6)" and "(7)" as paragraphs "(6)", "(7)" and "(8)", respectively;

(2) in the redesignated paragraph (6) by striking "1018(e)(2) or (3)" and replacing it with "1018(e)(4) or (5)";

(3) in the redesignated paragraph (7) by adding "or violates section 1004 of this title," after "1007 or 1018 of this title"; and

(4) by inserting a new paragraph (5) as follows:

"(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation is not subject to the 15-day advance notification required by section 1018(a) or to any reporting requirements established by the Attorney General pursuant to section 1018(e) (1), (2) or (3) by

misrepresenting the actual country of final destination of the listed chemical, or the actual listed chemical being imported or exported; or".

(d) Section 1011 of the Controlled Substances Import and Export Act (21 U.S.C. 961) is amended by striking the present text in its entirety and replacing it with the following--

§ 1011. Injunctions

"In addition to any other applicable penalty, any person convicted of a felony violation of this title or title II relating to the receipt, distribution, manufacture, importation or exportation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years."

Subtitle D--Arms Trafficking

Section 5401. Enhanced tools to investigate illicit arms trafficking.

Section 40(h) of the Arms Export Control Act (Subsection (h) of Section 2780 of Title 22, United States Code) is amended to read as follows--

"(h) Exemptions for transactions subject to National Security Act reporting requirements or arising out of a criminal investigation.--The prohibitions contained in this section do not apply with respect to any transaction--

"(1) subject to reporting requirements under Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.); or

"(2) arising out of an investigation by a federal law enforcement agency concerning possible criminal violations of U.S. law."

Section 5402. Background checks for purchases of explosives.

(a) **IN GENERAL.**--Section 842 of title 18, United States Code, is amended by adding at the end the following:

"(p) (1) Beginning six months from the date that the national instant criminal background check system is established under section 103 of Pub. L. 103-159, (107 Stat. 1541), or six months from the date this section is enacted into law, whichever is later, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer explosive materials to any other person who is not a licensee or permittee under this chapter unless--

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103(d) of the Brady Handgun Violence Prevention Act;

"(B) (i) the system provides the licensee with a unique identification number; or

"(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of explosive materials by such other person would violate subsection (i) of this section; and

"(C) the transferror has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of explosive materials would not violate subsection (i) of this section or State law, the system shall--

"(A) assign a unique identification number to the transfer; and

"(B) provide the licensee with the number

"(3) Paragraph (1) shall not apply to the transfer to explosive materials between a licensee and another person if--

"(A) (i) such other person has presented to the licensee a State permit that--

"(I) allows such other person to possess or acquire explosive materials; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of explosive materials by such other person would be in violation of law; or

"(B) on application of the transferor, the Secretary has certified that compliance with paragraph (1) (A) is impracticable because--

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premisses of the licensee at which the transfer is to occur are extremely remote in relation to the chief

law enforcement officer (as defined in subsection (p)(8)); and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of explosive materials by such other person would violate subsection (i) of this section or State law, and the licensee transfers explosive materials to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(5) If the licensee knowingly transfers explosive materials to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of explosive materials by such other person would violate subsection (i) of this

section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 843 and may impose on the licensee a civil fine of not more than \$5,000.

"(6) Neither a local government nor an employee of the Federal Government of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

"(A) for failure to prevent the sale of transfer of explosive materials to a person whose receipt or possession of the explosive materials is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess explosive materials."

(b) **WRITTEN REASONS PROVIDED ON REQUEST.**--If the national instant criminal background check system determines that an individual is ineligible to receive explosive materials and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(c) **CORRECTION OF ERRONEOUS SYSTEM INFORMATION.**--If the national instant criminal background check system informs an individual contacting the system that receipt of explosive materials by a prospective transferee would violate subsection (i) of section 842 of title 18, United States Code, or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reason therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(d) **REMEDY FOR ERRONEOUS DENIAL.**--Chapter 40 of title 18, United States Code, is amended by inserting after section 843 the following new section:

"843A. Remedy for erroneous denial of explosive materials

"Any person denied explosive materials pursuant to subsection (p) of section 842--

"(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

"(2) who was not prohibited from receipt of explosive materials pursuant to subsection (I) of section 842, may bring an action against the State or political subdivision responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fee as part of the costs".

(e) **TECHNICAL AMENDMENT.**--The chapter analysis for chapter 40 of title 18, United States Code, is amended by inserting after the item relating to section 843 the following new item:

"843A. Remedy for erroneous denial of explosive materials.".

(f) **LICENSES AND USER PERMITS.**--Section 843(a) of title 18, United States Code, is amended--

(1) by inserting ", including fingerprints and a photograph of the applicant" before the period at the end of the first sentence; and

(2) by striking the second sentence and inserting the following: "Each applicant for a license shall pay for each license a fee established by the Secretary that shall not exceed \$300. Each applicant for a permit shall pay for each permit fee established by the Secretary that shall not exceed \$100."

Section 5403. Prohibiting convicted felons from possessing black powder.

Section 845(a) of title 18, United State Code, is amended in paragraph (5) by inserting before the semicolon "by persons not otherwise prohibited from receipt and possession of explosive materials under section 842(i) of this chapter".

**TITLE VI--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST
INTERNATIONAL CRIME**

Section 6001. Sharing proceeds of joint forfeiture operations with cooperating foreign agencies.

(a) IN GENERAL.--Section 981(i)(1) of title 18, United States Code, is amended by striking "this chapter" and inserting "any provision of federal law".

(b) CONFORMING AMENDMENT.-- Section 511(e)(1) of the Controlled Substances Act (21 U.S.C. § 881(e)(1)) is amended by striking "; or" and all of sub-paragraph (E) and inserting a period, and by inserting "or" after the semi-colon at the end of subparagraph (C).

Section 6002. Streamlined procedures for execution of MLAT requests.

(a) IN GENERAL.--Chapter 117 of title 28, United States Code, is amended by inserting the following new section:

"§ 1790. Assistance to Foreign Authorities

"(a) The Attorney General may present a request made by a foreign government for assistance with respect to a foreign investigation, prosecution, or proceeding regarding a criminal matter pursuant to a treaty, convention, or executive agreement for mutual legal assistance between the United States and that government or in accordance with 28 U.S.C. § 1782, the execution of which requires or appears to require the use of compulsory

measures in more than one judicial district, to a judge or judge magistrate of:

"(i) any one of the districts in which persons who may be required to appear to testify or produce evidence or information reside or are found, or in which evidence or information to be produced is located; or

"(ii) the United States District Court for the District of Columbia.

A judge or judge magistrate to whom a request for assistance is presented shall have the authority to issue such orders as appear to be necessary to execute the request including, but not limited to, orders appointing a person to direct the taking of testimony or statements and the production of evidence or information, of whatever nature and in whatever form, in execution of the request.

"(b) A person appointed shall have the power to:

"(i) issue orders for the taking of testimony or statements and the production of evidence or information, which orders may be served at any place within the United States.

"(ii) administer any necessary oath, and

"(iii) take testimony or statements and receive evidence and information.

"(c) A person ordered pursuant to subparagraph (b)(i) to appear outside the district in which that person resides or is found may, within 10 days of receipt of such order:

"(i) file with the judge or judge magistrate who authorized execution of the request a motion to appear in the district in which that person resides or is found or in which the evidence or information is located; or,

"(ii) provide written notice, requesting appearance in the district in which the person resides or is found or in which the evidence or information is located, to the person issuing the order to appear, who shall advise the judge or judge magistrate authorizing execution.

"(d) The judge or judge magistrate may transfer the request, or that portion requiring the person's appearance, to the other district if:

"(i) the inconvenience to the person is substantial; and

"(ii) the transfer is unlikely to adversely affect the effective or timely execution of the request or a portion thereof.

Upon transfer, the judge or judge magistrate to whom the request or a portion thereof is transferred shall complete its execution in accordance with paragraphs (a) and (b).".

(b) CONFORMING AMENDMENT.--The chapter analysis for Chapter 117 of Title 28, United States Code, is amended by inserting the following at the end:

"1790. Assistance to Foreign Authorities".

Section 6003. Temporary transfer of incarcerated witnesses.

Section 3508 of title 18, United States Code, is amended--

(1) in its title to read "Temporary transfer of witnesses in custody";

(2) by deleting all existing paragraphs after "(a)"; and

(3) by inserting in its place the following:

"(b) When the testimony of a person who is serving a sentence, in pretrial detention, or otherwise being held in custody in the United States, is needed in a foreign criminal proceeding, the Attorney General shall have the authority to temporarily transfer that person to the foreign country for the purpose of giving such testimony, to transport such person from the United States in custody, to make appropriate arrangements for custody for such person while outside the United States, and to return such person in custody to the United States from the foreign country. When the person is being held in custody for a violation of State law, the Attorney General may exercise the authority described in

this paragraph if the appropriate State authorities give their consent.

"(c) Where the transfer to or from the United States of a person in custody for the purpose of giving testimony is provided for by treaty or convention, by this section, or both, that person shall be returned to the United States, or to the foreign country from which the person is transferred. In no event shall the return of such person require any request for extradition or extradition proceedings, or require that a person be subject to deportation or exclusion proceedings under the laws of either country.

"(d) Where there is an international agreement between the United States and the foreign country in which the witness is being held in custody or to which the witness will be transferred from the United States, and which provides for the transfer, custody and return of such witnesses, the terms and conditions of that international agreement shall apply. Where there is no such international agreement, the Attorney General may exercise the authority described in paragraphs (a) and (b) if both the foreign country and the witness give their consent.

"(e) Notwithstanding any other provision of law, persons held in custody in a foreign country who are transferred to the United States pursuant to this section for the purpose of giving testimony shall not thereby or for so long as they are present in the United States pursuant to such transfer be entitled to apply for or obtain any right or remedy under the Immigration and Nationality Act of 1952, as amended, including the right to apply for or be granted asylum or withholding of deportation or any right to remain in the United States under any other law. Persons so transferred may be summarily removed from the United States upon order by the Attorney General. Nothing in this section shall be construed to create any substantive or procedural right or benefit to remain in the United States that is legally enforceable in a court of law of the United States or of a State by any party against the United States or its agencies or officers."

"(f) The Attorney General shall not take any action under this section to transfer or return a person to a foreign country unless she determines, after consultation with the Secretary of State, that such transfer or return would be consistent with United States international obligations. A determination by

the Attorney General under this subsection shall not be subject to judicial review by any court."

(4) CONFORMING AMENDMENT.--The chapter analysis for Chapter 223 of title 18, United States Code, is amended by deleting the present entry for section "3508" and inserting in its place as follows:

"3508. Temporary transfer of witnesses in custody".

Section 6004. Training of foreign law enforcement agencies.

Section 660(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2420), as amended, is amended --

(1) in paragraph (4) by striking "or";

(2) in paragraph (6), by striking the period at the end thereof and inserting "; or"; and

(3) adding the following new paragraph:

"(7) With respect to assistance, including training, provided for antiterrorism purposes."

Section 6005. Discretionary authority to use forfeiture proceeds.

Section 524(c)(1) of title 28, United States Code, is amended by inserting the following new subparagraph (J) immediately following subparagraph (I):

"(J) at the discretion of the Attorney General, payments to return forfeited property repatriated to the United States by a foreign government or others acting at the direction of a foreign

government, and interest earned on such property, subject to the following conditions:

"(i) a final foreign judgment entered against a foreign government or those acting at its direction, which foreign judgment was based on the measures, such as seizure and repatriation of property, that resulted in deposit of the funds into the Fund;

"(ii) such foreign judgment was entered and presented to the Attorney General within five years of the date that the property was repatriated to the United States;

"(iii) the foreign government or those acting at its direction vigorously defended its actions under its own laws; and

"(iv) the amount of the disbursement does not exceed the amount of funds deposited to the Fund, plus interest earned on such funds pursuant to 28 U.S.C. § 524(c)(5), less any awards and equitable shares paid by the Fund to the foreign government or those acting at its direction in connection with a particular case."

**TITLE VII--STREAMLINING THE INVESTIGATION AND PROSECUTION
OF INTERNATIONAL CRIMES IN U.S. COURTS**

Section 7001. Reimbursement of state and local law enforcement agencies in international crime cases.

The Attorney General is authorized to obligate, as necessary expenses, from any appropriate appropriation account available to the Department of Justice in fiscal year 1998 and thereafter, the cost of reimbursement to state or local law enforcement agencies for translation services and related expenses, including transportation expenses, in cases involving extradition or requests for mutual legal assistance from foreign governments.

Section 7002. Facilitating the admission of foreign records in U.S. courts.

(a) IN GENERAL.-- Chapter 163 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 2468. Foreign Records

"(a) In a civil proceeding in a court of the United States, including civil forfeiture proceedings and proceedings in the United States Claims Court and the United States Tax Court, a foreign record of regularly conducted activity, or copy of such record, obtained pursuant to an official request, shall not be excluded as evidence by the hearsay rule if a foreign certification, also obtained pursuant to the same official request or subsequent official

request that adequately identifies such foreign record, attests that--

"(1) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

"(2) such record was kept in the course of a regularly conducted business activity;

"(3) the business activity made or kept such a record as a regular practice; and

"(4) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

"(b) A foreign certification under this section shall authenticate such record or duplicate.

"(c) As soon as practicable after a responsive pleading has been filed, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such

motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

"(d) As used in this section, the term--

"(1) 'foreign record of regularly conducted activity' means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

"(2) 'foreign certification' means a written declaration made and signed in a foreign country by the custodian of a record of regularly conducted activity or another qualified person, that if falsely made, would subject the maker to criminal penalty under the law of that country;

"(3) 'business' includes business, institution, association, profession, occupation, and calling of every kind whether or not conducted for profit; and

"(4) 'official request' means a letter rogatory, a request under an agreement, treaty or convention, or any other request for information or evidence made by a court of the United States or an authority of the United States having law enforcement responsibility, to a court or other authority of a foreign country.".

(b) CONFORMING AMENDMENT.-- The chapter analysis for chapter 163 of title 28, United States Code, is amended by inserting the following at the end:

"2468. Foreign Records"

Section 7003. Safe conduct for foreign witnesses testifying in U.S. courts.

(1) IN GENERAL.--Chapter 305 of title 18 of the United States Code is amended by inserting the following new section:

"§ 4088. Safe conduct for witnesses temporarily in the United States.

"(a) The Attorney General may determine that when a person located outside the United States is requested by a Magistrate judge or federal law enforcement officer to appear and provide testimony or answer questions in the United States in connection with any state or federal criminal matter, the person shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded the person's departure from the foreign jurisdiction.

"(b) The Attorney General may specify in any grant of safe conduct the appropriate duration and conditions thereof. Absent contrary direction by the Attorney General, the safe

conduct provided for by this section shall cease seven days after:

"(i) the person completes their testimony or their answers to the questions;

"(ii) the requesting Magistrate judge or federal law enforcement officer has notified either the person or the appropriate authorities in the foreign jurisdiction that the person's presence in the United States is no longer required;

"(iii) or when the person leaves the United States; whichever occurs first.

"(c) Absent contrary direction by the Attorney General, persons granted safe conduct--

"(i) shall not be entitled to apply for or obtain any right or remedy under the Immigration and Nationality Act of 1952, as amended, for so long as they are present in the United States pursuant to such grants; and

"(ii) may be summarily removed from the United States at the expiration of the safe conduct period upon order of the Attorney General, and such orders shall not be subject to administrative or judicial review.

"(d) A determination by the Attorney General to grant, deny, or condition safe conduct under this section is not subject to judicial review.

"(e) To the extent the provisions of an applicable mutual legal assistance treaty are inconsistent with this section, the treaty provisions shall apply.

"(f) For purposes of this section, the term--

"(1) 'Magistrate judge' has the meaning prescribed in Rule 54 of the Federal Rules of Criminal Procedure;

"(2) 'federal law enforcement officer' has the meaning prescribed in section 115 of this title: and

"(3) 'state' means a state of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

(2) CONFORMING AMENDMENT.--The chapter analysis for Chapter 305 of title 18, United States Code, is amended by inserting the following at the end:

"4088. Safe conduct for witnesses temporarily in the United States".

Section 7004. Prohibiting fugitives from benefitting from time served abroad.

Section 3585 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) **Exclusion for time served abroad.**--Notwithstanding subsection (b), a defendant shall receive no credit for any time spent in official detention in a foreign country where:

"(1) the defendant fled from, or remained outside of, the United States to avoid prosecution or imprisonment;

"(2) the United States officially requested the defendant's return to the United States for prosecution or imprisonment; and

"(3) the defendant is in custody in the foreign country pending surrender to the United States for prosecution or imprisonment.".

Section 7005. Suspension of statute of limitations for collection of evidence located abroad.

Section 3292(b) of title 18, United States Code, is amended to read as follows:

"(b) Except as provided in subsection (c) of this section, a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which, the foreign court or authority having taken final action on the request and having transmitted the decision or results to the United States, it is delivered to the United States authority requesting it.".

Section 7006. Clarification of discretionary nature of payments to informants.

Subparagraph (a)(2)(B) of section 619 of the Tariff Act of 1930, as amended (19 U.S.C. 1619), is further amended by the addition of the phrase "in the sole discretion of the Secretary or his designee," after the semicolon therein.

INTERNATIONAL CRIME CONTROL ACT OF 1998

Section-by-Section Analysis

**TITLE I--INVESTIGATING AND PUNISHING VIOLENT CRIMES
AGAINST U.S. NATIONALS ABROAD**

- Section 1001. Murder and extortion against U.S. nationals abroad in furtherance of organized crime.
Section 1002. Murder and serious assault of a state or local official abroad.

TITLE II--STRENGTHENING THE BORDERS OF THE UNITED STATES

Subtitle A--Violence Committed Along U.S. Border

- Section 2101. Felony punishment for violence committed along the U.S. border.

**Subtitle B--Strengthening Maritime Law Enforcement
Along U.S. Borders**

- Section 2201. Sanctions for failure to heave to, obstructing a lawful boarding, and providing false information.
Section 2202. Civil penalties to support maritime law enforcement.
Section 2203. Customs orders.

**Subtitle C--Smuggling of Contraband and
Other Illegal Products**

- Section 2301. Smuggling contraband and other goods from the United States.
Section 2302. Controlling illicit liquor trafficking.
Section 2303. Customs duties.
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TITLE III--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

**Subtitle A--Strengthening Extradition to Ensure International
Criminals Are Brought to Justice**

- Section 3101. Extradition for offenses not covered by a list treaty.
Section 3102. Extradition absent a treaty.
Section 3103. Technical and conforming amendments.

**Subtitle B--Strengthening Immigration Laws to Exclude
International Criminals from the United States**

- Section 3201. Exclusion of persons fleeing prosecution in other countries.
- Section 3202. Exclusion of persons involved in racketeering and arms trafficking.
- Section 3203. Exclusion of persons who have benefitted from illicit activities of drug traffickers.
- Section 3204. Exclusion of persons involved in international alien smuggling.

**Subtitle C--Additional Tools to Deny Safe Haven to
International Criminals**

- Section 3301. Temporary transfer of persons in custody for prosecution.
- Section 3302. Prohibiting fugitives from benefitting from their fugitive status.
- Section 3303. Transfer of foreign prisoners to serve sentences in country of origin.
- Section 3304. Transit of fugitives for prosecution in foreign countries.

**TITLE IV--SEIZING AND FORFEITING THE ASSETS OF
INTERNATIONAL CRIMINALS**

- Section 4001. Criminal penalties for violations of anti-money laundering orders.
- Section 4002. Border search authority for drugs, weapons, terrorist items, and monetary instruments.
- Section 4003. Forfeiture of proceeds of foreign crimes.
- Section 4004. Forfeiture of property used to commit drug crimes abroad.
- Section 4005. Forfeiture of property used to violate federal explosives laws.
- Section 4006. Cracking down on illegal money transmitting businesses.
- Section 4007. Enhancing prosecutions in international drug and money laundering cases.
- Section 4008. Seizure of assets of persons arrested abroad.
- Section 4009. Access to financial records in bank secrecy jurisdictions.
- Section 4010. Expanding civil money laundering laws to reach foreign persons.

- Section 4011. Punishment of money laundering through foreign banks.
- Section 4012. Addition of serious foreign crimes to list of money laundering predicates.
- Section 4013. Authority to order convicted criminals to return property located abroad.
- Section 4014. Enforcement of foreign forfeiture judgments.
- Section 4015. Administrative summons authority under the Bank Secrecy Act.
- Section 4016. Encouraging financial institutions to notify law enforcement authorities of suspicious financial transactions.
- Section 4017. Exempting financial enforcement data from unnecessary disclosure.
- Section 4018. Criminal and civil penalties under the International Emergency Economic Powers Act.
- Section 4019. Attempted violations of the Trading With the Enemy Act.

TITLE V--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

Subtitle A--Computer and High-Tech Crime

- Section 5101. Enhanced authority to investigate computer fraud and attacks on computer systems.
- Section 5102. Jurisdiction over certain financial crimes committed abroad.

Subtitle B--Alien Smuggling

- Section 5201. Forfeiture for alien smuggling.

Subtitle C--Trafficking in Chemicals Used to Produce Drugs

- Section 5301. Import and export of chemicals used to produce illicit drugs.

Subtitle D--Arms Trafficking

- Section 5401. Enhanced tools to investigate illicit arms trafficking.
- Section 5402. Background checks for purchases of explosives.
- Section 5403. Prohibiting convicted felons from possessing black powder.

**TITLE VI--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST
INTERNATIONAL CRIME**

- Section 6001. Sharing proceeds of joint forfeiture operations with cooperating foreign agencies.
- Section 6002. Streamlined procedures for execution of MLAT requests.
- Section 6003. Temporary transfer of incarcerated witnesses.
- Section 6004. Training of foreign law enforcement agencies.
- Section 6005. Discretionary authority to use forfeiture proceeds to promote cooperation with foreign agencies.

**TITLE VII--STREAMLINING THE INVESTIGATION AND PROSECUTION
OF INTERNATIONAL CRIMES IN U.S. COURTS**

- Section 7001. Reimbursement of state and local law enforcement agencies in international crime cases.
- Section 7002. Facilitating the admission of foreign records in U.S. courts.
- Section 7003. Safe conduct for foreign witnesses testifying in U.S. courts.
- Section 7004. Prohibiting fugitives from benefitting from time served abroad.
- Section 7005. Suspension of statute of limitations for collection of evidence located abroad.
- Section 7006. Clarification of discretionary nature of payments to informants.

**TITLE I--INVESTIGATING AND PUNISHING VIOLENT CRIMES
AGAINST U.S. NATIONALS ABROAD**

**Section 1001. Murder and extortion against U.S. nationals
abroad in furtherance of organized crime.**

This section provides additional discretionary authority for investigations and prosecutions of organized crime groups who perpetrate criminal acts against U.S. nationals abroad. With the expanded role of federal law enforcement, specifically the Federal Bureau of Investigations, in the investigation of international organized criminal groups, additional legislation is needed to counteract crimes occurring abroad. Statutes now in effect are narrow and generally address these kinds of issues only when they are related to international terrorism matters. This provision broadens the scope of other current statutes so that they can be of assistance in targeting violent criminal acts committed against U.S. nationals by members of organized criminal groups. The same safeguards are required that have been established in statutes relating to international terrorism, *i.e.*, such a prosecution cannot be brought without the approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General. In subsection (g), the statute places a monetary limitation in extortion cases, and defines an organized criminal group by reference to the RICO statute. These limitations have been included to preclude any expectation that the United States will devote resources to investigate and prosecute cases which are of primarily local (versus international) impact or those which the foreign nation is adequately addressing.

**Section 1002. Murder and serious assault of a state or local
official abroad.**

This section provides additional discretionary authority to investigate and prosecute murders and serious assaults of state and local officials that occur abroad when the state and local officials are involved in a federally-sponsored training or assistance program. As the United States expands its efforts to fight international crime and bring peace and stability to nations the world over, the role of state and local officials -- law enforcement, judges, and others -- in federally-sponsored training and other forms of assistance programs is also increasing. The scope of these programs is broad, and includes programs designed to bolster law enforcement, promote trade and tourism, and improve education. As with United States military

personnel, these officials may become targets of violent acts committed abroad. Insofar as these officials are often involved in training designed to assist a host country in improving its criminal justice system or other public-sector infrastructures, the host country may lack the resources and skills to effectively investigate and prosecute such crimes. Because these officials are acting under the auspices of the federal government, the United States has a strong interest in prosecuting those criminals who attack and kill them. As with other provisions of law that allow extraterritorial jurisdiction over crimes, this provision requires that the Attorney General approve any prosecutions under this section.

TITLE II--STRENGTHENING THE BORDERS OF THE UNITED STATES

Subtitle A--Violence Committed Along U.S. Border

Section 2101. Felony punishment for violence committed along the U.S. border.

This section will establish a specific criminal penalty of up to ten years for "portrunning," that is, intentionally evading border inspections by driving through ports of entry without stopping, causing injury to or putting at risk of injury federal officers and civilians alike. The section provides strict sanctions where the portrunning involves a crime of violence against customs officers, immigration officers, or other persons charged with enforcing laws along U.S. borders, or is accompanied by an attempt to smuggle contraband or controlled substances. It also would enhance the criminal penalty under 18 United States Code 111 for persons who knowingly disregard or disobey the lawful authority of a federal officer charged with enforcing laws along the border and thereby recklessly endanger the safety of any person or property.

Drug, alien, and other smuggling activity has always been associated with a potential for violence along the southwest border. Increasingly, smugglers have taken to violent and dangerous means to evade apprehension at our borders, endangering law enforcement officers and innocent members of the public. Such activity includes over a thousand recent incidents of "portrunning." Currently, there is no specific federal jurisdiction over crimes of violence committed in the course of evading our border controls, and state law has to be used, where applicable, to prosecute violators that injure civilians. This section will correct that problem by creating specific sanctions, such that the federal government will be able to prosecute portrunners, as well as those committing crimes of violence at our borders, more easily and effectively under federal law.

Subtitle B -- Strengthening Maritime Law Enforcement Along U.S. Borders

The Coast Guard is authorized to enforce, or assist in the enforcement of, all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States (14 United States Code 2). Coast Guard commissioned, warrant, and petty officers are also deemed to be customs officers (14 United States Code 143; 19 United States Code 1401). The Coast Guard may board and examine any vessel subject to the

jurisdiction of the United States (14 United States Code 89). To carry out this broad grant of authority, statutory sanctions are needed against the master, operator, or person in charge of a vessel who fails to obey the order of a federal law enforcement officer to heave to, or who otherwise obstructs the exercise of law enforcement authority.

Under existing law, a civil penalty can be imposed for failure to heave to a vessel upon the command of a customs officer (19 United States Code 1581(d)). However, the penalty only applies to violations involving vessels at those places where a customs officer is authorized to stop and board. In addition, a criminal and civil penalty can be imposed for failure to stop a vessel when hailed by a customs officer or other government authority within 250 miles of the territorial sea of the United States (19 United States Code 1590(g)(8)). However, these penalties may be imposed only on vessels caught with prohibited or restricted merchandise. As a last resort, to compel vessels to heave to, the Coast Guard is authorized, after firing warning shots, to fire into and disable a vessel which has failed to stop (14 United States Code 637).

Appropriate sanctions are required to facilitate and enhance the Coast Guard's interdiction of vessels smuggling contraband. The Coast Guard requires an intermediate measure -- short of firing into a vessel -- to compel a vessel to comply with a lawful order to heave to. Without such sanctions drug smugglers can delay or sometimes prevent the legitimate exercise of Coast Guard law enforcement boarding authority.

Such sanctions are necessary to address the following scenario. The operator of a vessel fails to heave his vessel to in order to delay a Coast Guard boarding. After a lengthy pursuit, the vessel is finally boarded and no contraband is found. Or the operator of a vessel avoids being boarded by failing to heave his vessel to and fleeing; he eventually enters the territorial waters of a safe haven country. In either case, the vessel may have initially been carrying contraband -- which has been jettisoned -- or may have been acting as a decoy to divert Coast Guard assets away from other vessels carrying contraband. The use of such tactics by drug smugglers not only thwarts Coast Guard drug law enforcement efforts, but diverts Coast Guard assets from their other missions.

Sanctions are also required to deter non-forcible acts of obstruction during a Coast Guard boarding. While forcibly obstructing a federal law enforcement officer is a crime (18

United States Code 111, 113), no statute provides penalties, criminal or civil, for non-forcible acts of obstruction during a Coast Guard boarding. Such penalties are needed as a deterrent to prevent confrontational situations from escalating from non-physical obstructions of boardings to physical assaults on Coast Guard boarding officers.

Sanctions are also required as a means to compel persons on board vessels to provide truthful information regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. False information concerning a vessel's nationality or registration can delay the determination as to whether the United States has jurisdiction over a vessel, or hinder attempts to obtain consent from a foreign country for the United States to exercise jurisdiction. This offers drug smugglers the opportunity to jettison contraband and destroy evidence. Truthful information concerning the vessel's destination, origin, ownership, cargo, or crew facilitates the ability of the boarding team to determine whether the vessel may be engaged in drug smuggling. This information is also important for the successful prosecution of drug smuggling cases.

Sections 2201-03 of this title address these gaps in current United States drug interdiction law by increasing the authority of federal law enforcement officers over the movement of vessels. Criminal penalties are provided by Section 2201 for failure to obey the order of a federal law enforcement officer to heave to a vessel. These same sanctions are imposed against persons on board vessels who fail to comply with an order in connection with the boarding of a vessel, impede or obstruct a boarding, or provide certain false information during a boarding. These provisions are bolstered by section 2201, which provides civil penalties for failure to support maritime law enforcement, and by section 2203, which clarifies the authority of Customs officers in foreign countries.

Section 2201. Sanctions for failure to heave to, obstructing a lawful boarding, and providing false information.

This section makes several changes to enhance enforcement of federal law involving vessels. Subsection (a)(1) provides that it shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to fail to obey an order to heave to that vessel on being ordered to do so by an authorized federal law enforcement officer. Paragraph (2) provides that it shall be unlawful for any person on board a vessel of the United

States, or a vessel subject to the jurisdiction of the United States, to: (1) fail to comply with an order of an authorized federal law enforcement officer in connection with the boarding of the vessel; (2) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any federal law; or (3) provide false information to a federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. Nothing in this section is a limitation on 18 United States Code 1001, which makes it a crime to give a false statement to a government agent.

Subsection (b) provides that this section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any federal law enforcement officer under any law of the United States to order a vessel to heave to. This section is necessary to establish that this statute in no way limits the potential actions of federal law enforcement officers that exist under other statutes.

Subsection (c) specifies that a foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section in an international agreement, or, on a case-by-case basis, by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

Subsection (d) defines the terms used in this section, including "vessel of the United States;" "vessel subject to the jurisdiction of the United States;" to "heave to;" and "Federal law enforcement officer."

Subsection (e) sets forth penalties for violation of this section. Any person who intentionally violates the provisions of this section shall be subject to: (1) imprisonment for not more than five years; and (2) a fine as provided in this title.

Subsection (f) authorizes the seizure and forfeiture of a vessel that is used in violation of this section. Existing customs laws and duties shall apply to such seizures and forfeitures. This subsection further provides that any vessel that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section. This provision gives added force to the prohibitions contained in the

section, and provides additional incentives to would-be portrunners to comply with the law.

Section 2202. Civil penalties to support maritime law enforcement.

This section amends chapter 17 of title 14, United States Code, by adding a new section 675. Subsection (a) authorizes the Secretary of Transportation to impose a civil penalty of not more than \$15,000 upon the master, operator or person in charge of a vessel, who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel issued under the authority of section 2237 of title 18, United States Code. The Secretary is authorized to impose a civil penalty of not more than \$25,000 for intentional violations. This order is to be communicated according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood. Subsection (b) provides that any vessel used in violation of this subtitle is also liable in rem.

Section 2203. Customs orders.

Section 1205 adds a new subsection (i) to section 581 of the Tariff Act of 1930 (19 United States Code 1581) that defines "authorized place" as that term is used in section 581. Authorized place is defined as the following: with respect to a vessel or vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches. This amendment clarifies the law enforcement authority of customs officers in foreign countries.

Subtitle C -- Smuggling of Contraband and Other Illegal Products

Section 2301. Smuggling contraband and other goods from the United States.

Under existing law, there is no general criminal statute covering illegal exports. Congress long ago created such a statute for importation activity conducted contrary to law, 18 United States Code § 545, and this amendment is intended to create a parallel provision for exportation activity conducted contrary to law.

The amendment is needed because, although there are currently many provisions of federal law that prohibit or restrict the

exportation of certain items, specific criminal sanctions do not exist for all of the export restrictions. Examples of export prohibitions that already exist but lack a criminal sanction include 7 United States Code § 136, et seq., which deal with insecticides and pesticides, 15 United States Code § 45, which covers unfair deceptive practices including unlawful textile exports, and 42 United States Code § 7522, which deals with air pollution and motor vehicle emissions.

This amendment is primarily intended to cover those export prohibitions that lack criminal sanctions. The amendment is not intended to affect in any fashion the ability of the United States to bring prosecutions under other provisions of law, where applicable, that also cover illegal exports.

The provision also amends the money laundering statute, 18 United States Code § 1956, to make a violation of this new provision a predicate under the money laundering statute. The intent of this change is to make this provision as powerful a tool as possible to combat illegal export smuggling. The definitional sections proposed are patterned after similar provisions in 18 United States Code § 545.

Proposed subsection (d) provides for civil forfeiture of the goods involved in a violation of this provision. Subsection (d) would provide clear authority for civil forfeiture of merchandise exported contrary to federal law, and of property used to facilitate the receipt, purchase, transportation, concealment or sale of such merchandise prior to exportation. Subsection (d) would amend one of the principal customs forfeiture statutes, 19 U.S.C. 1595a, which already provides for, among other things, the civil forfeiture of merchandise introduced in the United States contrary to law. This subsection is necessary because, although Congress has already provided some authority under current law for the forfeiture of commercial goods (in 22 United States Code § 401), that statute is designed primarily to provide for the forfeiture of exported illegal war materials.

Section 2302. Controlling illicit liquor trafficking.

In recent years, there has been a dramatic increase in illegal commerce in liquor. The majority of this illegal commerce is between the United States and Canada because the excise taxes in Canada are significantly higher than those in the United States. The Canadian government has formally requested the assistance of United States law enforcement agencies in this matter.

Intelligence gathered indicates that international organized crime is heavily involved in the illegal diversions to Canada. It is estimated that States have lost millions of dollars due to liquor diversion, while Canadian authorities estimate that Canada is losing more than one billion dollars a year in tax revenues from illegal diversion. Moreover, the monies obtained by diversion finance other illegal activities such as money laundering, alien smuggling, narcotics trafficking, and illegal firearms trafficking. It follows that the proceeds of diversion avoid federal and State income taxes as well. Although these diversion-related transactions involve violations of federal, State, and foreign laws, there is currently no comprehensive federal felony which could be applied to the various diversion schemes. Therefore, a statute is needed that provides a uniform and systematic approach to the problem of liquor diversion by providing both an adequate deterrent to this conduct, as well as an enforcement tool that will aid prosecutors.

Proposed section 1266 will combat the problem of illicit liquor on three fronts. First, the bill will broaden the jurisdiction of the U.S. Customs Service under 18 United States Code § 546 by prohibiting the smuggling of merchandise into foreign countries by means of vehicles or aircraft, in addition to the existing prohibition against smuggling via vessel. Second, it will make a violation of § 546 a predicate under the money laundering statute. Third, on a more minor note, it would remove an archaic requirement that the government must prove the foreign country has laws proscribing violations of U.S. customs revenues, an element of proof that involves courts and prosecutors in difficult and unnecessary litigation. Fourth, the bill will add a new section 1266 to title 18 of the United States Code. This provision would allow the United States to stop the illegal liquor trafficking as soon as the distilled spirits are shipped in violation of state law. It also allows the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) to attack the diversion schemes in their incipiency, if the illegal commerce involves a distillery or wholesaler of distilled spirits who is licensed and subject to record keeping requirements and inspection by ATF officers. The proposed legislation would thus allow ATF to cut off the flow of illicit liquor at the source.

Specifically, proposed section 1266 would:

(1) Create federal felonies which would uniformly apply with respect to diversions of liquor from the United States to Canada. There is no current federal felony statute that ATF and the

Department of Justice can utilize to uniformly prevent the diversion of liquor from the United States to Canada before such liquor enters Canada. The proposed legislation sets a minimum threshold of 360 liters (30 cases) of liquor, which is presumed to be more than is intended for personal use. The transportation, shipment, or introduction of 360 or more liters into a State in violation of its laws therefore triggers a federal felony which would provide significant penalties for violations which occur in the United States; and

(2) Provide for the seizure and forfeiture of any conveyance, liquor, or monetary instrument involved in a violation of 18 United States Code § 1266, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 United States Code § 1266.

The proposed legislation is in harmony with the Twenty-First Amendment, which bars the transportation of distilled spirits from one State into another "for delivery or use therein" in violation of the laws of the recipient State, and with the Commerce Clause of Article I, which empowers Congress to "regulate Commerce with foreign Nations, and among the several States." In the Webb-Kenyon Act, which is a statutory reiteration of the Twenty-First Amendment, Congress clearly directed that the federal government assist states in the exercise of their police powers regulating the traffic or control of alcoholic beverages within their borders. Further, in the Federal Alcohol Administration Act, 27 United States Code § 203, Congress directed close federal regulation of the interstate and foreign commerce in liquor, protection of the revenue, and limitation of such commerce to qualified and licensed individuals. Finally, Congress has, through the enactment of the Interstate Transportation in Aid of Racketeering statute, 18 United States Code § 1952, and the Contraband Cigarette Trafficking Act, 18 United States Code § 2342, demonstrated its desire that the federal government maintain a strong federal enforcement presence with respect to illegal interstate trafficking in commodities such as liquor and tobacco.

This section would be especially helpful in maintaining a strong federal enforcement presence in the area of liquor diversion because states and foreign governments do not always have the resources, expertise, or jurisdiction to attack this problem when it transcends state and international boundaries.

Section 2303. Customs duties.

The proposal amends 18 United States Code 542 to establish a five year sentence for violation of 18 United States Code 542 (entry of goods by means of false statements), thereby curing a problem that has arisen with respect to the embezzlement of customs duties by customs brokers. Section 545 of Title 18 (smuggling) provides for a five year sentence, while Section 542 of Title 18, which is Section 545's sister statute, currently only provides a two year sentence. Moreover, Section 542 has been interpreted to require that the government establish that a customs broker had the specific intent to deprive the government of duties in order to obtain a conviction for embezzling importers' funds that are earmarked for payment of customs duties. See United States v. Yip, 930 F.2d 142 (2nd Cir. 1991). Prior to this case, it was the government's position that it need only show that the broker's actions were willful. Restoration of that interpretation will remove a significant impediment to the successful prosecution of importers' agents who abscond with clients' funds. The legislation will render Section 542 consistent with Section 545 and will cure the defect associated with the Yip case by requiring that the government show only that the defendant's actions were willful and that they resulted in a deprivation of lawful duties.

Section 2304. False certifications relating to exports.

This section creates a criminal statute that proscribes a false certification that exported goods qualify for preferential treatment under international agreements to which the United States is a signatory. Currently, there is no such general proscription. Under the North American Free Trade Agreement (NAFTA), the United States pledged to provide, at a minimum, the same legal consequences for exporters or producers who falsely certify goods as originating goods under the NAFTA, as would apply to importers who make false statements to Customs upon the importation of merchandise. See Article 504. This legislation will fill a gap that was inadvertently created when the NAFTA implementing legislation created a civil penalty for such an activity but failed to create a corresponding criminal penalty. The proposal will also proscribe similar activities that violate future trade agreements.

TITLE III--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

**Subtitle A--Strengthening Extradition to Ensure International
Criminals Are Brought to Justice**

**Section 3101. Extradition for offenses not covered by a list
treaty.**

The United States currently has extradition treaty relations with approximately 110 countries. Well over half of these treaty relationships were developed more than 20 years ago, when common international extradition practice was to negotiate "lists" or "schedules" of extraditable offenses with our extradition treaty partners based on the serious crimes common to the legal systems of the United States and each treaty partner at the time of the negotiation. As a result, the treaty relations of the United States with many countries do not include more modern offenses such as money laundering, bribery, counterfeiting, and some crimes of violence, including certain crimes against children. This section will amend existing extradition law to authorize the United States to extradite to treaty partners for modern crimes that may not be included in these older list treaties.

The statute allows the Attorney General to authorize the filing of a complaint under this provision for both list and certain serious non-list offenses as though all were covered by the existing treaty, and provides that the extradition process will be handled by judicial officers in the same manner as for list offenses. All provisions of the relevant treaty would apply as if the offense were a crime provided for by the treaty.

The proposal incorporates important safeguards before extradition may be ordered when a treaty exists but it fails to cover the crime for which extradition has been requested. A certification is required by the Attorney General that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State that, in the judgment of the Secretary, submission of the request would be consistent with the foreign policy interests of the United States and the facts and circumstances then known would not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable.

As provided in most of our extradition treaties, the proposal provides for provisional arrest in cases of urgency. Extradition

under the statute would be possible only for enumerated serious offenses. In addition, the provision follows present practice under extradition treaties by vesting in the Secretary of State the final determination whether to surrender a fugitive and, if appropriate, to impose conditions upon such surrender.

Section 3102. Extradition absent a treaty.

Except for a narrow provision of the Antiterrorism and Effective Death Penalty Act of 1996 permitting extradition of non-U.S. nationals who are charged with committing a crime of violence against U.S. citizens overseas (18 United States Code 3181(b)) and a provision of law providing for extradition from the United States to the war crimes tribunals for the Former Yugoslavia and Rwanda (18 United States Code 3181 Note), existing law permits the United States to extradite offenders to foreign nations only when there is a treaty or convention in force with that nation. However, the process of negotiating and ratifying new treaties is both time consuming and complex, and the United States cannot always predict when law enforcement needs will call for an extradition treaty with a particular country. At present, there are close to 70 countries in the world with which the U.S. has no extradition treaty at all.

This inability to surrender even escaped convicts to a large number of nations without a treaty means that criminals can, at least in some instances, find "safe haven" in the United States. It also impedes our ability to secure extradition without a treaty from non-treaty partners. There are countries in the world which can extradite in the absence of a treaty. However, such countries are usually willing to do so only when there exists at least the possibility of reciprocity. Consequently, this statute would create the legal authority for such reciprocal treatment, and open the door for the extradition of important fugitives back to the United States from countries with which our extradition treaty relationship is non-existent.

The proposal incorporates important safeguards before extradition may be ordered in the absence of a treaty. A certification is required by the Attorney General (delegable only to the Deputy Attorney General) that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State (delegable only to the Deputy Secretary of State) that, in the judgment of the Secretary, based on facts then known, submission

of the request would be consistent with the foreign policy interests of the United States, the facts and circumstances -- including humanitarian considerations -- do not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable, and the country submitting the request is not doing so in order to try or punish the person based primarily on the person's race, religion, nationality, or political opinions.

The proposal provides for the provisional arrest of a person when there is probable cause to believe the person is extraditable. As in extradition pursuant to a treaty, a judicial officer may only find a person extraditable if it finds probable cause to believe that the person before the judicial officer is the person sought in the foreign state, and probable cause to believe that the person before the judicial officer committed the offense for which such person is sought, or was duly convicted of that offense in the requesting state.

Extradition under the statute would be possible only for enumerated serious offenses of a character punishable by more than ten years imprisonment in the United States such as drug trafficking, money laundering, and crimes of violence, including certain crimes against children. In addition, the provision maintains present law by vesting in the Secretary of State the final determination whether to surrender a fugitive. The Secretary's decision takes into account humanitarian considerations, and the Secretary may impose conditions upon the surrender and demand assurances of compliance as the Secretary believes appropriate. The statute further provides that the Secretary shall demand in every case that the person not be tried or punished for an offense other than for which the person has been extradited, and that the person not be subject to capital punishment unless the person was subject to the same punishment by the applicable laws in the United States.

Section 3103. Technical and conforming amendments.

This section is necessary to reconcile the changes made to existing statutes by sections 3101 and 3102.

Subtitle B--Strengthening Immigration Laws to Exclude International Criminals from the United States

Section 3201. Exclusion of persons fleeing prosecution in other countries.

This section will add flight to avoid lawful prosecution as an additional ground of inadmissibility under the Immigration and Nationality Act and designate the country seeking to prosecute such individuals as the primary country of deportation. This section will be triggered if the crime for which prosecution is sought is a crime of moral turpitude, other than a purely political offense.

Individuals often seek refuge in the United States to avoid prosecution for crimes committed in other countries. Presently, if such persons are detected attempting to enter the United States, the United States must either find some other basis for exclusion (e.g., having been previously convicted of another crime), or embark on lengthy extradition proceedings, assuming there is an applicable extradition treaty, which is not always the case.

This section will provide an independent statutory basis to remove persons who enter or attempt to enter the United States for the purpose of avoiding lawful prosecution in another country and to return them to the country seeking their prosecution unless the Attorney General, in his/her discretion, determines that such return would be impracticable, inadvisable, or impossible. An additional ground of removal under INA section 237 is not necessary because such an alien fugitive found in the United States would be removable under section 237(a)(1)(A) as an alien inadmissible at the time of entry or adjustment of status. The provision is intended to reach situations where the person flees after a warrant has been issued or in anticipation of a warrant being issued. Nothing in this proposed new section would alter U.S. obligations to protect bona fide refugees. Persons covered by this section remain eligible to apply for withholding of deportation under INA section 241(b)(3), and asylum under section 208, to the extent those remedies would otherwise be available.

Section 3202. Exclusion of persons involved in racketeering and arms trafficking.

This section will provide for inadmissibility of any individual whom a consular officer has reason to believe has or is engaged in certain RICO and arms trafficking offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the United States, regardless of whether a judgment of conviction has been entered or avoided due to flight, corruption, etc. This section treats serious criminals with the same standard applicable to drug traffickers and will

make our ability to exclude aliens involved in such activities less dependent upon our ability to draw inferences about a person's intent to do something illicit in the United States. With only minor exceptions, the RICO offenses referenced constitute crimes involving moral turpitude that are already grounds for exclusion under the Immigration and Nationality Act.

The section will similarly exclude the spouse, son or daughter (regardless of age) of such persons if, within the previous five years, they benefitted from such illicit activity and reasonably should have known that the benefit was the result of illegal activity. This exclusion of close family members will increase pressure on aliens involved in racketeering and arms trafficking to abandon their illegal activity, and will ensure that such aliens cannot benefit by having their spouses, sons, or daughters travel to the United States with impunity.

The provision includes a waiver provision that allows the Attorney General to waive its applicability for offenses other than aggravated felonies. This provision has been added to provide the Attorney General flexibility to waive these provisions in the event that there is a law enforcement, humanitarian or other important national interest justifying such waiver.

Section 3203. Exclusion of persons who have benefitted from illicit activities of drug traffickers.

This section will provide for exclusion of spouses and children whom the Attorney General or a consular officer has reason to believe are or have been, within the previous five years, benefitting from the illegal activities of controlled substance violators, when such persons have known or reasonably should have known that they were receiving benefits from such illicit activities. Such aliens will be subject to the same standard applicable to drug traffickers, and their associates who direct or assist them, without having to meet current RICO limitations relating to the expenditure of funds in the United States. The provision is subject to waiver in certain limited, enumerated circumstances.

Section 3204. Exclusion of persons involved in international alien smuggling.

This section will address the problem of excluding international alien smugglers where there is evidence that they have assisted aliens to illegally enter countries other than the United States, but not the United States. Often there is a strong

likelihood that such assistance was part of a scheme to illegally bring such aliens into the U.S. or could develop into a scheme to illegally bring such aliens into the U.S., but under current law the alien providing such assistance may not be excludable. This provision will allow consular officers and the Immigration and Naturalization Service to find such aliens ineligible for entry into the U.S. when the alien should have known that the illegal entry into another country would have assisted other aliens to enter the U.S. in violation of law.

**Subtitle C--Additional Tools to Deny Safe Haven to
International Criminals**

Section 3301. Temporary transfer of persons in custody for prosecution.

This section addresses two situations. In the first, a person wanted to stand trial in the United States is already in detention -- perhaps serving a long sentence -- in another country. Some of our most modern extradition treaties permit the defendant to be "temporarily surrendered," that is, temporarily transferred to the United States for purposes of trial, and then returned to the foreign country to complete service of sentence. However, the majority of treaties do not, and absent such a treaty provision, any transfer must wait until the defendant's foreign sentence has expired, which delay significantly jeopardizes the prospects for an effective prosecution and which may deny to victims and defendant the benefits of a speedy trial. This provision ameliorates that problem.

In subsection (a) it provides independent, discretionary statutory authority for the Attorney General to request the temporary surrender for purposes of trial of defendants in custody who have been found extraditable to the United States, to maintain their custody while in the U.S., and to return them expeditiously at the conclusion of trial, so that they may serve out the remainder of their foreign sentence (or if in pretrial custody, to proceed to trial in the foreign jurisdiction).

In the second situation, a defendant wanted in a foreign country is in custody in the United States either pending trial or post-trial. Subsection (b) gives the Attorney General authority -- where the Attorney General and the Secretary of State agree -- to temporarily surrender a defendant incarcerated in the U.S. to a foreign country to which the defendant has been found extraditable by the appropriate judicial officer in the manner prescribed by applicable federal extradition law. This provision will not only

allow us to assist a foreign country in assuring a prompt trial of the offender, but also, by allowing us to make assurances of reciprocity, enhance the prospects of foreign countries being willing to send incarcerated defendants to the U.S. under the circumstances contemplated in subsection (a).

Because subsection (b) applies to persons in pretrial as well as post-trial detention, the statute is drafted to make clear that a temporary transfer for prosecution of a person in pre-trial detention pursuant to this provision interrupts that person's pretrial detention status. The statute provides that, during the period of such interruption, a person who had been in pretrial detention prior to their temporary transfer not challenge the conditions of their confinement in the foreign country to which they have been transferred based on the terms of this statute. Because pretrial detention is a creature of statute, see 18 United States Code § 3142, this provision accomplishes that end by limiting that existing provision of law to make clear it does not apply to persons while in the foreign country temporarily pursuant to this provision.

Because there may be new conditions that arise during the interruption in pretrial detention status but which are not -- for the reason discussed above -- properly the subject of a motion to revisit conditions of release, it is contemplated that a pretrial detainee who is temporarily transferred could bring a motion pursuant to 18 United States Code § 3142(f), and receive a new hearing to assess their conditions of confinement, immediately upon their return to the United States.

Similarly, although it is not mandated by the statute, it is contemplated that a prisoner under sentence in the United States who was temporarily transferred to a foreign country and is returned back to the United States pursuant to this provision could, upon his or her return, bring an appropriate motion under 18 United States Code §§ 2241 or 2255.

Further, although 18 United States Code § 3142(i)(2) requires that any pretrial detention order state that such persons be "committed to the custody of the Attorney General for confinement in a corrections facility", the impact of that provision is necessarily altered to the extent that the Attorney General is empowered by this provision to interrupt the pretrial detention and temporarily transfer pretrial detainees to a foreign country.

Finally, because such confinement is an interruption in that person's U.S. custody, it is contemplated that a person

transferred to a foreign country under this provision would not be entitled to receive credit under 18 United States Code § 3585(b) for any time spent in custody in that foreign country.

The intent of these provisions and associated comments is to make clear that a person transferred under this provision is not, by virtue of this statute, in U.S. custody while in the foreign country. Rather, but for the fact that they are eventually returned to the United States, such persons are treated the same way as any other person not in custody or pretrial detention who is picked up by legal authorities in the United States and is extradited to a foreign country pursuant to existing treaties and extradition statutes.

Subsection (c) addresses those situations in which the defendant is willing to be transferred and to forego formal extradition proceedings. This may often be the case since a temporary transfer for prosecution may enable the defendant to defend the foreign case while any exculpatory evidence is most readily available. In those situations, the Attorney General may exercise the transfer authorities under subsections (a) and (b) without a prior finding of extraditability if the defendant to be transferred and all the governments involved consent.

Subsection (d) makes it clear that the return of the person at the conclusion of the proceedings for which he was transferred does not require extradition or immigration proceedings, nor is a person being temporarily transferred to the U.S. able to use his transfer for trial as an avenue for obtaining asylum. This provision is necessary to prevent temporary transferees from frustrating the statute's purpose and remaining in the United States despite an agreement between the United States and the prisoner's country of origin.

The statute requires that, before a decision is made to request a transfer under subsections (a) and (b), the Attorney General shall make a determination, in consultation with the Secretary of State, that such a transfer would be consistent with the United States' international obligations. This will ensure that any humanitarian concerns, such as the possibility that the person may be subjected to persecution or torture upon transfer or return to the foreign country, may be considered prior to the transfer.

Lastly, as to any defendant temporarily transferred to a foreign country pursuant to this provision who was in custody pretrial, it is contemplated that such transfer would constitute

"delay resulting from trial with respect to other charges against the defendant," for purposes of the Speedy Trial Act, 18 United States Code § 3161(h)(D). Thus, any time spent in the foreign country answering charges there would be excluded by Courts applying the Speedy Trial Act in computing the time within which an information or indictment must be filed, or in computing the time within which the trial of any such offense must commence.

Section 3302. Prohibiting fugitives from benefitting from their fugitive status.

This provision authorizes the district court to bar a fugitive from justice from attempting to hide behind his fugitive status while contesting a civil forfeiture action against his property. It reinstates what is commonly known as the fugitive disentitlement doctrine under which "a person who is a fugitive from justice may not use the resources of the civil legal system while disregarding its lawful orders in a related criminal action." United States v. Eng, 951 F.2d 461, 464 (2d Cir. 1991) (applying the doctrine to bar an appellant who was resisting extradition from participating in related civil forfeiture proceedings).

Eng and similar cases in other circuits applied a judicially created rule intended to protect the integrity of the judicial process from abuse by a fugitive in a criminal case. But in Degen v. United States, 116 S.Ct. 1777 (1996), the Supreme Court held that as a judge-made rule, the sanction of absolute disentitlement goes too far. In the absence of legislative authority to bar a fugitive from filing a claim, courts must resort to other devices to prevent a fugitive from abusing the discovery rules or otherwise taking advantage of his fugitive status in litigating a civil forfeiture case, such as imposing sanctions for failure to comply with discovery orders.

These devices, however, are not adequate to address the problems that arise when fugitives contest forfeiture actions. Moreover, if a forfeiture action involves a business, perishable property, or any other asset whose value depreciates with time, the government cannot simply stay the civil case until the fugitive is apprehended. In such cases, delay is prejudicial to the government, "for if its forfeiture claims are good, its right to the properties is immediate." Degen, 116 S. Ct. at 1782. Finally, as the Supreme Court acknowledged, the law should not encourage "the spectacle of a criminal defendant reposing in Switzerland, beyond the reach of our criminal courts, while at the

same time mailing papers to the court in a related civil action and expecting them to be honored." Degen, 116 S. Ct. at 1783.

This provision addresses these concerns through legislation, thus imposing the straightforward sanction of disqualification that judges by themselves are not able to impose without statutory authorization. Under the proposal, the doctrine would apply in all civil forfeiture cases such as Eng, as well as in ancillary proceedings in criminal forfeitures in which fugitive third-parties might otherwise be able to file claims. For the purposes of this provision, a fugitive from justice would be any person who, in order to avoid criminal prosecution, purposely leaves the jurisdiction or decides not to return to it. See 951 F.2d at 464.

Section 3303. Transfer of foreign prisoners to serve sentences in country of origin.

This section amends the prisoner transfer statute to eliminate the statutory requirement that prisoners consent to transfer, and it permits non-consensual transfers where provided by treaty. Presently, all U.S. prisoner transfer treaties require consent of the prisoner. This amendment will remove any inconsistency between U.S. domestic prisoner transfer law and prisoner transfer treaties we may negotiate in the future that do not include a prisoner consent requirement. Each transfer will be approved on an individual basis and only after an evaluation is made of the information we have available about the alien and about the particular foreign prison system at issue.

It should be noted that even where non-consensual treaty provisions can be negotiated, it will not necessarily follow that transfer of most or all eligible aliens will be appropriate for transfer. A critical consideration will be whether the alien's home country is in a position to fully enforce the U.S. sentence. Thus, limited suitable prison capacity in the foreign country may be a consideration bearing on the pace and extent to which the number of prisoner transfers increases significantly.

Section 3304. Transit of fugitives for prosecution in foreign countries.

It is not uncommon that international fugitives being transferred from one country to face trial in another may need to transit a third country such as the United States. Indeed, the international airports of the U.S. are logical transit points between other continents. It is important that the practical necessity of transit not serve to frustrate international

cooperation in the rendition of fugitives, and this proposal is intended to assure that the U.S. can cooperate effectively with law enforcement partners overseas when they must pass through the U.S. as they escort a prisoner to stand trial.

Many U.S. extradition treaties provide for, and indeed set out obligations regarding, transit. However, those treaties do not provide an adequate framework of authority to deal with the full range of circumstances and issues pertaining to international transit of prisoners. First, the person may be in transit to a country with which we do not have a current extradition treaty, or with which we have an old treaty that does not address transit. Such a situation might arise, for example, where a Russian organized crime figure was being extradited to Russia, with which we have no treaty, from a country in South America, and transit through the U.S. were required. While the Attorney General's parole authority under the immigration laws may provide some basis for holding transitting prisoners, it was not developed with this situation in mind and, of course, it can have no application where the prisoner is a U.S. citizen.

Second, fugitives are not always returned through a formal extradition process, the process generally necessary to invoke the transit provisions of a treaty. Instead, a country may have exercised lawful authority to deport or exclude a fugitive. In those situations, clear statutory authority to accommodate a foreign request to permit transit will be extremely helpful.

Third, even where a treaty transit provision is applicable, such provisions generally deal with mechanisms, often diplomatic communications, through which the treaty partners seek and grant transit requests, but not with the underlying basis for maintaining the custody of the person. For these reasons, a clear statement of statutory authority for the Attorney General to permit the transit and maintain the custody of the person is warranted.

The language of this provision makes it clear that the decision of the Attorney General to exercise the transit authority is a discretionary matter and not subject to judicial review. Of course, the discretionary nature of the authority set out in this section is not in anyway intended to derogate any obligations of the United States to grant transit in accordance with the provisions of our extradition or other relevant treaties. In exercising this discretion, the Attorney General would consult with the Secretary of State. Such coordination between the State and Justice Departments is common with respect to treaty

provisions regarding transit. Moreover, such consultations will be extremely useful in the event there are foreign policy reasons or international human rights concerns that might argue against the granting of transit in a particular case.

Finally, it is not intended that prisoners, by virtue of the practical necessity of their transitting the United States on the way to face trial, should thereby be subject to the same documentation requirements, and be afforded the full range of rights and remedies otherwise applicable to aliens in the United States, under the Immigration and Nationality Act of 1952. This concern is specifically addressed in the final sentence of the new section, which provides that such transitting prisoners are required to have only such documents as required by the Attorney General, shall not be considered to be admitted or paroled into the United States, and shall not be entitled to apply for asylum or any other right or remedy under that Act.

**TITLE IV--SEIZING AND FORFEITING THE ASSETS OF
INTERNATIONAL CRIMINALS**

Section 4001. Criminal penalties for violations of anti-money laundering orders.

Section 5326 of title 31, United States Code, permits the Secretary of the Treasury to issue "geographic targeting orders" lowering various Bank Secrecy Act ("BSA") reporting threshold requirements for 60 day periods to permit the government to detect attempts to evade the BSA. For example, such an order, commonly referred to as a GTO, may be used to lower the currency reporting requirement from \$10,000 to some lower amount for 60 days to detect the transfer of narcodollars from a given area such as New York to Colombia through money transmitters.

31 United States Code §§ 5321 and 5322 impose civil and criminal penalties, respectively, for violations of the BSA and BSA regulations; Section 5324 creates additional criminal offenses for failing to file a report, filing a false or incomplete report, and structuring currency transactions in order to evade a reporting requirement under the BSA. Those statutes, however, do not specifically refer to reports required by GTOs issued under section 5326. This provision eliminates any possible doubt concerning the applicability of these provisions to GTOs by inserting specific references to section 5326 in the respective statutes.

Section 4002. Border search authority for drugs, weapons, terrorist items, and monetary instruments.

Each year, billions of dollars worth of illegal drugs and other contraband are sold in the United States. A substantial portion of this illicit trade is controlled by, or linked to, international crime groups. Like most criminal organizations, these groups must either launder their ill-gotten gains in the United States or smuggle bulk currency out of the United States. In addition, a substantial amount of illegal firearms, child pornography, instrumentalities of terrorism, and other dangerous articles are smuggled out of the United States. There is ample evidence demonstrating that criminal organizations -- including international drug cartels -- use the U.S. mail to smuggle money and contraband out of the United States, in part because of the current restrictions on searches of outbound U.S. mail. For example, a 4 lb. letter-class package -- which under current law may not be searched without a warrant -- can hold approximately \$100,000 in \$100 bills.

This proposal would enhance the ability of Customs investigators to search outbound U.S. mail for money, firearms, drugs, and other contraband under prescribed conditions. Section 4002 would authorize searches of letter-class outbound mail upon reasonable suspicion it contained a monetary instrument (checks or cash), drugs, firearms, weapons of mass destruction, information related to national defense, or several other categories of dangerous materials. The proposal further would authorize suspicionless searches of outbound non-letter class packages. Such authority was endorsed by the Gore Commission on aviation security and terrorism.

The statute would not be used by Customs to engage in the wholesale opening of letter class mail containing monetary instruments in small amounts. Moreover, the statute is not a vehicle to allow Customs to read letters in outbound mail, even when those letters accompany monetary instruments. As the statute sets forth, any correspondence found inside such a letter or package could not be read without first obtaining a warrant based upon probable cause. Individuals could gain further privacy protection by not sending correspondence and monetary instruments in the same letter.

There is substantial support in federal law and court decisions supporting broad authority for Customs searches at U.S. borders, including authority to search outbound mail. See, e.g., 31 United States Code 5317 (authorizing Customs searches at the border of persons, conveyances, envelopes, and other items) (emphasis added); United States v. Ramsey, 431 U.S. 606 (1977); United States v. Oriakhi, 57 F.3d 1290 (4th Cir. 1995); United States v. Smith, 29 F.3d 270 (7th Cir. 1994). Despite this authority, Treasury regulations and Customs practice are more circumscribed than the Fourth Amendment might otherwise permit. Section 4002 is designed to provide broader authority to search outbound mail in a manner that balances the need to halt the smuggling of drugs, firearms, child pornography, other dangerous articles and monetary instruments through the use of outbound mail against the privacy concerns associated with letter-class mail of domestic origin. The current proposal is not designed to codify the outer reach of Customs search authority under the Fourth Amendment.

Section 4003. Forfeiture of proceeds of foreign crimes.

This provision authorizes the forfeiture of the proceeds of any foreign crime that has been designated as "specified unlawful

activity" for purposes of the money laundering statute. Such crimes currently include drug trafficking, terrorism and other crimes of violence and bank fraud. By authorizing the forfeiture of the proceeds of such crimes when found in the United States, the provision makes it more difficult for international criminals to use the United States as a haven for the profits from their crimes, and it permits the United States to assist foreign governments in recovering the proceeds of crimes committed abroad.

The forfeiture provision will only apply where the foreign offense was punishable by at least one year in prison in the foreign country, and would be recognized as a felony under federal law if committed within the jurisdiction of the United States.

Section 4004. Forfeiture of property used to commit drug crimes abroad.

In accordance with the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the "Vienna Convention"), which the United States ratified on November 11, 1990, the United States is obligated to enact procedures for the forfeiture of both the proceeds and the instrumentalities of foreign crimes involving drug trafficking. 18 United States Code § 981(a)(1)(B) already provides for the forfeiture of foreign drug proceeds, but it does not provide for the forfeiture of facilitating property. The amendment rectifies this omission.

Section 4005. Forfeiture of property used to violate federal explosives laws.

The unlawful use of explosive materials is widely recognized as a serious violent crime problem. This section would authorize the civil and criminal forfeiture of any conveyance, chemicals, laboratory equipment or any other device made, possessed, used or intended to be used to commit a violation of the federal explosives law (except for record keeping and storage offenses). Currently, only the explosive material can be forfeited. The enhanced forfeiture authority would deprive criminals of the materials used to continue their illegal trade in explosive materials.

Section 4006. Cracking down on illegal money transmitting businesses.

As a recent study by the Treasury Department has revealed, an increasingly popular means of laundering drug proceeds and remitting the proceeds to South American countries and elsewhere

involves the use of money transmitting businesses in the United States. For example, cash proceeds of drug trafficking in New York may be deposited with a money transmitter by couriers under the pretext of sending money back to relatives in Columbia. The operation of an illegal money transmitting business is a violation of federal law under 18 United States Code § 1960.

When Congress enacted § 1960 in 1992, it provided for criminal but not civil forfeiture. The proposal corrects this oversight, and thus allows the government to forfeit property involved in the operation of an illegal money transmitting business even if the perpetrator is a fugitive.

Also, the proposal clarifies the scienter requirement in § 1960 to avoid the problems that occurred when the Supreme Court interpreted the currency transaction reporting statutes to require proof that the defendant knew that structuring a cash transaction to avoid the reporting requirements had been made a criminal offense. See Ratzlaf v. United States, 114 S. Ct. 655 (1994). The proposal makes clear that all the defendant need have known was that the money transmitted was unlicensed, and that a license was required by state law. He need not know that the operation of an unlicensed business is a criminal offense.

Section 4007. Enhancing prosecutions in international drug and money laundering cases.

This section creates a rebuttable presumption that will apply to the forfeiture of the proceeds of foreign drug offenses under 18 United States Code § 981(a)(1)(B). It is derived from the presumption in 21 United States Code § 853(d) which provides that, in criminal cases, income earned by a drug trafficker during the time he is trafficking in illegal drugs is presumed to be drug proceeds if the trafficker has no other obvious source of income.

The presumption in § 853(d), which has been in effect since 1984, has been used successfully in cases where a drug trafficker has been convicted and the government seeks to forfeit a large sum of cash, or deposits in a bank account, that the drug dealer acquired during the time in which he was engaged in the illegal activity, but the evidence linking the funds specifically to the drug offenses is lacking. Because of the statutory presumption, the court is empowered to find that the currency accumulated by the drug trafficker during the time he was committing the drug offense was in fact drug proceeds, and is therefore subject to forfeiture, unless the defendant rebuts the presumption by

proffering evidence that the money came from some legitimate source.

The proposed presumption would work the same way in the civil forfeiture context. In other words, if the government brings a civil forfeiture action against a sum of money in the United States that was acquired by a person during the time in which the person was committing a foreign offense for which forfeiture is authorized under § 981(a)(1)(B), the court would be empowered to presume that the money represented the proceeds of the foreign offense and it would be subject to forfeiture unless the person claiming the funds offered proof that the funds were derived from a legitimate source. The presumption is essential to the ability of law enforcement to forfeit the proceeds of foreign crimes because of the difficulty in tracing the proceeds of foreign offenses without access to foreign records.

This section also establishes rebuttable presumptions applicable to international money laundering forfeitures for violations of 18 United States Code § 1956 and 1957, which frequently involve sophisticated efforts to transfer, by wire or other means, large sums of money through shell corporations or bank secrecy jurisdictions in a manner calculated to avoid detection. In such cases, a rebuttable presumption is necessary to allow the government to overcome the efforts made to obscure the true nature of the transaction and to force the claimant to come forward with evidence regarding the source of the money. Moreover, without such a presumption, some courts may not permit the government to draw any inference from the absence of evidence that the money came from a legitimate source. See United States v. Rutgard, 108 F.3d 1041 (9th Cir. 1997) (government's argument that money was forfeitable under § 982 as property involved in money laundering because there was no evidence of a legitimate source improperly shifted burden of proof to the defendant).

Both of these presumptions provisions were contained in the "Forfeiture Act of 1996" which is pending before Congress. The definition of "shell corporation" is taken from Financial Action Task Force recommendation 13 which defines, "domiciliary companies," a diplomatic term for shell corporations.

Section 4008. Seizure of assets of persons arrested abroad.

This section relates to situations where a person has been arrested in a foreign country and there is a danger that property subject to forfeiture in the United States in connection with the foreign offenses will disappear if it is not immediately

restrained. In the case of foreign arrests, it is possible for the property of the arrested person to be transferred out of the United States before U.S. law enforcement officials have received from the foreign country the evidence necessary to support a finding a probable cause for the seizure of the property in accordance with federal law. This situation is most likely to arise in the case of drug traffickers and money launderers whose bank accounts in the United States may be emptied within hours of an arrest by foreign authorities in the Latin America or Europe.

To ensure that property subject to forfeiture in such cases is preserved, the new provision provides for the issuance of an ex parte restraining order upon the application of the Attorney General and a statement that the order is needed to preserve the property while evidence supporting probable cause for seizure is obtained. A party whose property is restrained would have a right to a post-restraint hearing in accordance with Rule 65(b), Fed.R.Civ.P.

Section 4009. Access to financial records in bank secrecy jurisdictions.

This section provides for dismissal of a civil claim or third party ancillary claim in a criminal forfeiture proceeding if the foreign bank records necessary to respond to the claim are in a bank secrecy jurisdiction and the claimant refuses to waive his or her bank secrecy rights in order to make the records available to the government. It was Section 144 of the "Forfeiture Act of 1996" which has been previously submitted to Congress. This proposal deals with financial records located in foreign jurisdictions that may be material to a claim filed in either a civil or criminal forfeiture case. It is frequently the case that in order for the government to respond to a claim, it must have access to financial records abroad. For example, in a drug proceeds case where a claimant asserts that the forfeited funds were derived from a legitimate business abroad, the government might need access to foreign bank records to demonstrate in rebuttal that the funds actually came from an account controlled by international drug traffickers or money launderers.

Numerous mutual legal assistance treaties (MLATs) and other international agreements now in existence provide a mechanism for the government to obtain such records through requests made to a foreign government. In other cases, the government is able to request the records only through letters rogatory. This amendment deals with the situation that commonly arises where a foreign government declines to make the requested financial records

available because of the application of secrecy laws. In such cases, where the claimant is the person protected by the secrecy laws, he or she has it within his or her power to waive the protection of the foreign law to allow the records to be made available to the United States, or to obtain the records himself or herself and turn them over to the government. It would be unreasonable to allow a claimant to file a claim to property in federal court and yet hide behind foreign secrecy laws to prevent the United States from obtaining documents that may be material to the claim. Therefore, this subsection 986(d) provides that the refusal of a claimant to waive secrecy in this situation may result in the dismissal of the claim with prejudice as to the property to which the financial records pertain.

Section 4010. Expanding civil money laundering laws to reach foreign persons.

This section amends the civil penalty provision of 18 United States Code § 1956. The first new provision is a long arm statute that gives the district court jurisdiction over a foreign bank that violates the money laundering statute, provided that the bank maintains an account in the United States and that the bank receives service of process pursuant to the applicable statutes or rules of procedure. The purpose of the provision is to ensure that a bank that violates the money laundering laws of the United States and that conducts banking business through an account in the United States does not escape liability under Section 1956(b) by asserting that its contacts with the United States are not sufficient to satisfy the "minimum contacts" requirements for in personam jurisdiction.

The second provision, modeled on 18 United States Code § 1345(b), gives the district court the power to restrain property or take other action necessary to ensure that a defendant in a § 1956 action does not dissipate the assets that would be needed to satisfy a judgment under that section.

Section 4011. Punishment of money laundering through foreign banks.

Section 1956 of Title 18, United States Code, makes it an offense to conduct a transaction involving a financial institution if the transaction involves criminally derived property. Similarly, section 1957 of Title 18, United States Code, creates an offense relating to the deposit, withdrawal, transfer or exchange of criminally derived funds "by, to or through a financial institution." For the purposes of both statutes, the

term "financial institution" is defined in 31 United States Code § 5312. See 18 United States Code § 1956(c)(6); 18 United States Code § 1957(f).

The definition of "financial institution" in 31 United States Code § 5312 excludes foreign banks. Thus, as presently drafted, the government cannot rely on that definition to prosecute an offense under either § 1956 or § 1957 (of Title 18) involving a transaction through a foreign bank, even if the offense occurs in part in the United States. For example, if a person in the United States sends criminal proceeds abroad -- for example, to a Mexican bank -- and launders them through a series of financial transactions, the government could not rely on the definition of a "financial institution" in § 1956(c)(6) to establish that the transaction was a "financial transaction" within the meaning of § 1956(c)(4)(B) (defining a "financial transaction" as a transaction involving the use of a "financial institution"), or that it was a "monetary transaction" within the meaning of § 1957(f) (defining "monetary transaction" as, inter alia, a transaction that would be a "financial transaction" under § 1956(c)(4)(B)).

The amendment closes this loophole by including foreign banks within the definition of "financial institution" in 18 United States Code § 1956(c)(6). The definition is the same as the one set forth in 12 United States Code § 3101(7) which is already employed in 18 United States Code § 1956(c)(7)(B) for another purpose.

Section 4012. Addition of serious foreign crimes to list of money laundering predicates.

This amendment enlarges the list of foreign crimes for which money laundering prosecutions may be brought in this country when the proceeds of a foreign crime are laundered in the United States. Certain foreign offenses involving violence and bank fraud already have been made predicates for money laundering. Thus the government is already able to prosecute persons who use U.S. financial institutions to launder proceeds generated through the commission of some foreign crimes. By enlarging the list of foreign crimes set forth in the money laundering statute, the proposal makes it possible for the government to exercise this power in cases involving all crimes of violence and crimes as to which the U.S. is under an obligation to extradite or prosecute offenders.

The provision also expands the prosecutorial authority to include the laundering of the proceeds of frauds against foreign governments or foreign governmental entities and crimes of public corruption. Passage of this amendment would send a strong signal that the United States will not tolerate the use of its financial institutions for the purpose of laundering the proceeds of such activities.

Nothing in this section or the section amended is intended to criminalize any authorized activity of an intelligence or law enforcement agency of the United States.

Section 4013. Authority to order convicted criminals to return property located abroad.

In criminal forfeiture cases, the sentencing court is authorized to order the forfeiture of "substitute assets" when the defendant has placed the property otherwise subject to forfeiture "beyond the jurisdiction of the court." Frequently, this provision is applied when a defendant has transferred drug proceeds or other criminally derived property to a foreign country. For example, a defendant who earns illegal proceeds from drug trafficking in the United States may cause that money to be wired to bank accounts in Europe, the Caribbean, South America or Hong Kong where it is beyond the reach of U.S. law enforcement, but remains available to the criminal for use in financing future international criminal activity.

In many cases, the defendant has no other assets in the United States of a value commensurate with the forfeitable property overseas. In such cases, ordering the forfeiture of substitute assets in the United States does nothing to take the profit out of the crime or remove the ill-gotten gains from the control of the criminal.

Other countries, such as the United Kingdom, address this problem by authorizing the court to order the defendant to repatriate the property that he has sent abroad. Because the sentencing court has in personam jurisdiction over the defendant, it can use this authority to reach assets that are otherwise beyond the jurisdiction of the court, as long as the defendant retains control of the property.

This section amends 21 United States Code § 853 to authorize the sentencing court to issue a repatriation order either post-trial as part of the criminal sentence and judgment, or pre-trial

pursuant to the court's authority under 21 United States Code § 853(e) to restrain property, including substitute assets, so that they will be available for forfeiture. See United States v. Sellers, 848 F. Supp. 73 (E.D. La. 1994) (pre-trial repatriation order). Failure to comply with such an order would be punishable as a contempt of court, or it could result in a sentencing enhancement, such as a longer prison term, under the U.S. Sentencing Guidelines, or both. The government has the authority to grant use immunity to a defendant for the act of repatriating property to the United States pre-trial or while an appeal was pending if such act would tend to implicate the defendant in a criminal act in violation of the Fifth Amendment. Id. (no 5th Amendment violation if government does not use evidence of the repatriation in its case in chief).

Section 4014. Enforcement of foreign forfeiture judgments.

Article V of the 1988 UN Drug Convention requires the member nations (the Parties) to enact legislation providing for the forfeiture of proceeds and instrumentalities of drug trafficking and drug-related money laundering offenses. Specifically, paragraph 1(a) of Article V says that each Party shall adopt measures authorizing the forfeiture of "proceeds derived from offenses established in accordance with article 3, paragraph 1, [which defines the predicate drug and drug-related money laundering offenses], or property the value of which corresponds to that of such proceeds."

The United States is in full compliance with these requirements insofar as they relate to domestic forfeitures. The drug and money laundering forfeiture statutes enacted by Congress since 1978 authorize the forfeiture of both drug proceeds and property involved in money laundering offenses where the underlying crime is committed in the United States. The substitute assets provisions of these statutes permit the forfeiture of property of "equivalent value" when the property traceable to the criminal offense is unavailable. See 21 United States Code § 853(p). Indeed, these statutes frequently serve as models for other Parties seeking to comply with the Vienna Convention's requirements. Additional legislation, however, will support our compliance with the Convention's international forfeiture obligations.

Under Article V, a Party must provide for the forfeiture of drug proceeds derived from an offense occurring in another country by providing forfeiture assistance to a Party in whose jurisdiction the underlying drug or money laundering offense occurred.

This obligation applies both to the drug proceeds themselves and to property of equivalent value. Under 18 United States Code § 981(a)(1)(B), the United States can initiate a civil action against foreign drug proceeds that would result in the seizure and confiscation of such property. But because that statute is a civil in rem statute, it does not authorize the forfeiture of substitute assets of equivalent value.

The proposed statute is intended reinforce our compliance with the Vienna Convention in this regard by giving our treaty partners access to our courts for enforcement of their forfeiture judgments. Under the proposal, once a defendant is convicted of a drug trafficking or money laundering offense in a foreign country and an order of forfeiture is entered against him, the foreign country, as the Party requesting assistance under the Vienna Convention, would file a civil action as a plaintiff in federal court seeking enforcement of the judgment against assets that may be found in the United States. The Requesting Party, however, would not be allowed to file for enforcement without approval from the United States Department of Justice, thereby permitting the United States to screen out requests that are factually deficient or based on unacceptable foreign proceedings.

The concept of placing the Requesting Party in the posture of a plaintiff seeking enforcement of a judgment is drawn from Canada's Mutual Legal Assistance in Criminal Matters Act. Section 9 of the Act provides, in pertinent part:

Where the Minister [of Justice] approves a request of a foreign state to enforce the payment of a fine imposed in respect of an offense by a court of criminal jurisdiction of the foreign state, a court in Canada has jurisdiction to enforce the payment of the fine and the fine is recoverable in civil proceedings instituted by the foreign state, as if the fine had been imposed by a court in Canada.

The Justice Department has been informed by Canadian Justice Ministry authorities that, although this provision has not yet been applied, it is expected to cover foreign criminal forfeiture orders. Canada views Section 9 as part of its response to the Vienna Convention.

Enactment of this proposal would bring the United States into line with an important trend in international law enforcement while preserving our in rem/in personam distinctions and without requiring the government to become a party to the enforcement of a

foreign order. Laws providing for the enforcement of foreign confiscation orders have been enacted by a number of jurisdictions, including Australia, Denmark, Hong Kong, Japan, the Netherlands, Singapore, and the United Kingdom. We can anticipate that more countries will enact laws to give full faith and credit to their treaty partners' "equivalent value" forfeiture orders. If we expect such countries to enforce our forfeiture orders against substitute assets located abroad, we must be prepared to render reciprocal assistance.

Section 4015. Administrative summons authority under the Bank Secrecy Act.

This section will amend 31 United States Code § 5318(b) (1) to expand the situations in which an administrative summons will be sufficient to obtain information from financial institutions subject to the Bank Secrecy Act (BSA). At present, the Secretary of the Treasury is permitted to examine information maintained at financial institutions under the requirements of the BSA, but is permitted to summon information or individuals only "in connection with investigations for the purpose of civil enforcement of violations of" the BSA, its regulations, or certain related statutes. BSA policy requires the government to focus on the efficacy of compliance systems rather than attempt to identify particular BSA violations. Restriction of summons authority to investigations for the purpose of civil enforcement of BSA violations could hamper the ability of the Secretary to review the adequacy of compliance systems. In addition to existing civil enforcement authority, this amendment will enable the Secretary to review the adequacy of BSA compliance systems. Subpoena requests will remain subject to the account holder rights specified in the Right to Financial Privacy Act.

Section 4016. Encouraging financial institutions to notify law enforcement authorities of suspicious financial transactions.

This proposed amendment to 18 United States Code § 2702 would provide that "suspicious transactions relevant to possible violation of law or regulation" may be reported by electronic communications services to a law enforcement agency or a supervisory agency. This amendment would bring section 2702 into line with the disclosure provisions that exist currently for financial institutions covered by the Right to Financial Privacy Act. The provisions of 31 United States Code § 5318(g) (2), which prohibit disclosing to targets and others that a suspicious transaction has been reported pursuant to any authority, and 31

United States Code § 5318(g)(3), which provides a shield from civil liability for the disclosure of any possible violation of law or regulation or disclosure under any authority, would apply. Thus, international organizations that facilitate international money transfers but who may not be within the current definition of "financial institutions," such as Fedwire or CHIPS, could file such a report in good faith without fear of civil litigation.

Section 4017. Exempting financial enforcement data from unnecessary disclosure.

This section will amend the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) to exempt from disclosure information collected by the Department of the Treasury's Office of Foreign Assets Control in the administration of economic sanctions programs. IEEPA and TWEA currently do not exempt information submitted, obtained, or considered in connection with any transaction that is prohibited under these titles, including license applications, licenses or other authorizations, information or evidence obtained in the course of any investigation, and information obtained or furnished in connection with international agreements, treaties, or obligations. As a result, the agency devotes considerable time and resources to searching and indexing documents pursuant to Freedom of Information Act (FOIA), requests and then preparing the justification for withholding those documents from release due to certain FOIA exemptions. This information is ordinarily withheld on the grounds that it is proprietary information. However, the process of applying that FOIA exception involves a considerable expenditure of law enforcement resources and delay. Therefore, this information should be exempt on the ground that it is necessary for the purposes of IEEPA and TWEA.

These amendments would provide such information with the same statutory protection provided for similar information obtained or submitted under the Export Administration Act (EAA), which is placed outside the scope of searches required to be performed under FOIA requests. The Department of Commerce, Bureau of Export Administration, also favors this amendment to IEEPA, since it has been acting under IEEPA during periods when the EAA has lapsed and this amendment would ensure identical treatment of these documents under either statute.

Section 4018. Criminal and civil penalties under the International Emergency Economic Powers Act.

This provision will increase the monetary limits of the civil and criminal penalty authorities provided for in the International Emergency Economic Powers Act (IEEPA). IEEPA currently provides for civil penalties of up to \$10,000 per violation of IEEPA prohibitions, and criminal penalties of up to \$50,000 per violation for individuals and corporations, and imprisonment for up to 10 years per violation by individuals and participating corporate officers. These limitations no longer constitute effective deterrents for flagrant or willful violations of IEEPA and are significantly less than the penalty limitations provided for in the Trading with the Enemy Act for violations of economic sanctions imposed under that statute. The ineffectiveness of the civil penalty cap is particularly apparent in situations where the IEEPA violation relates to transactions (and profits) valued at many times the maximum penalty amount. This section will raise the IEEPA civil penalty authority to \$50,000 per violation, and raise the criminal penalty monetary limits to \$250,000 per violation for individuals and participating corporate officers, as is provided for criminal offenses generally in 18 United States Code 3571(b)(3), and \$1 million per violation for corporations.

Section 4019. Attempted violations of the Trading With the Enemy Act.

This section will amend the Trading with the Enemy Act (TWEA) to provide that criminal and civil penalties may be imposed not only against any person who violates a license, order, or regulation issued under TWEA, but also against a person who attempts to violate such a license, order, or regulation. Last year, Congress added an "attempt" provision to the International Emergency Economic Powers Act (IEEPA), but did not add a similar provision to its companion statute, TWEA. TWEA lacks an attempt provision similar to those found in other export administration statutes, for example, the Export Administration Act. Recent executive orders imposing economic sanctions and regulations implementing such orders typically include language prohibiting attempted violations. Current case law in the federal circuit courts of appeal supports promulgation of regulations prohibiting attempts to violate statutes not explicitly containing attempt language. In spite of these factors, the absence of an attempt provision in TWEA makes prosecution of attempted violations more problematic. To clarify existing law, and to insulate prosecutions of attempted violations from any possibility of attack based on the scope of the President's authority, these amendments expressly prohibit attempts to violate TWEA.

TITLE V--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

Subtitle A--Computer and High-Tech Crime

Section 5101. Enhanced authority to investigate computer fraud and attacks on computer systems.

This section would add certain violations relating to computer crime to the list of serious criminal activity for which 18 United States Code 2516 permits court authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Violations of 18 United States Code 1030 can include computer fraud and attacks on computer systems, such as those controlling the public telecommunications networks, air traffic control, and the electric power network. In computer attack cases, since the evidence of the crime may lie largely in cyberspace, interceptions of wire and electronic communications may be the primary or only available avenue of investigation. Moreover, in computer cases where the activities originate from a business or university, voicetaps may be the only way to complete the identification of the criminal actually using the terminal involved. The statute limits wiretap authority to investigation of felony offenses.

Section 5102. Jurisdiction over certain financial crimes committed abroad.

This section clarifies the extraterritorial jurisdiction of 18 United States Code 1029 (access device fraud). It expressly recognizes United States jurisdiction over access device fraud -- including credit card fraud, debit card fraud and telecommunications fraud -- in cases where the fraud causes an effect on an entity within the jurisdiction of the United States, even if the defendant has never physically entered the United States. Such a clarification is of great importance to the United States' ability to protect its financial system. The modern financial system relies substantially on access devices to access and utilize a vast array of accounts and systems, including credit and debit card accounts, accounts in banks and other financial institutions, electronic funds, and telecommunications systems. Increasingly, U.S. financial, corporate and government entities have implemented access device payment systems to conduct transactions reaching billions of dollars per day. The dramatic increase in electronic and computerized access to such systems from outside the United

States has enhanced the vulnerabilities of these systems to criminal activities internationally. By recognizing that the United States has the authority to protect its access device systems against both foreign and domestic threats, this section ensures the security and integrity of United States based payment systems in the same way that 18 United States Code § 470 ensures the integrity of United States currency. Together, this section and 18 United States Code § 470 will enhance the United States' ability to protect its financial system and combat transnational financial crimes that target that system.

Subtitle B--Alien Smuggling

Section 5201. Forfeiture for alien smuggling.

These amendments to the Immigration and Nationality Act will enhance the ability of the Immigration and Naturalization Service (the Service) to address the problem of alien smuggling by broadening the authority to obtain forfeiture of property used in or derived from smuggling operations.

Under current law, the Service may obtain forfeiture of conveyances (vehicles, boats, aircraft) used to smuggle, transport, or harbor aliens. This section would amend section 274(b) of the INA, 8 United States Code 1324(b), to broaden this forfeiture authority. The amendment makes subject to civil and criminal forfeiture all property, both real and personal, used or intended to be used to smuggle aliens. Also subject to forfeiture is any property, real or personal, which constitutes, is derived from, or is traceable directly or indirectly to the proceeds of the smuggling, transportation, or harboring of aliens. Innocent owners of property are protected by the proposed uniform innocent owner statute, to be codified at 18 United States Code § 983.

Subtitle C--Trafficking in Chemicals Used to Produce Drugs

Section 5301. Import and export of chemicals used to produce illicit drugs.

This provision gives the Drug Enforcement Administration the authority to require that exporters of certain listed chemicals to drug producing areas of the world document to DEA the ultimate consignee and use of the listed chemical. This provision clarifies DEA's authority to require advance

notification of imports and exports including identifying the importer in the country of destination.

If the importer is not the end user of the listed chemical, establishing the bona fides of the importer does not mean that the listed chemical will not be diverted. In the case of specific listed chemicals such as those essential for the production of cocaine that are shipped to the Andean region, it is necessary to have the authority to determine the final destination and use of the chemical. This legislation will authorize DEA to require by regulation additional information concerning the ultimate consignee and use of shipment of listed chemicals. The U.S. exporter involved in the transaction would be required to provide this information in addition to the information which is routinely supplied to DEA. The legislation will also provide DEA with the authority to require advance notification on all imports of certain chemicals which are of greater concern to the agency. Examples of this would be ephedrine and pseudo-ephedrine which are immediate precursors for methamphetamine.

The legislation will also correct a technical omission from previous legislation by imposing a direct obligation for advance notification of transshipment of listed chemicals through the United States. Currently, the Department of Justice requires this by regulation but has had to rely on its authority to control imports and exports to support the regulation. The legislation also provides a mechanism for disposition of suspended shipments, and gives the Attorney General injunctive authority under the Import Export Act, two important features not provided by current law.

Subtitle D--Arms Trafficking

Section 5401. Enhanced tools to investigate illicit arms trafficking.

The prohibitions under current law on the shipment of items controlled under the Arms Export Control Law to various countries preclude law enforcement agencies from obtaining authorization to engage in undercover transactions designed to detect illicit arms trafficking with those countries. This provision would provide an exception to the current provision when such transactions are undertaken for the purpose of investigating possible violations of U.S. law. It does not in any way affect other licensing or interagency approval requirements applicable to such shipments, nor internal agency

guidelines controlling the review and conduct of undercover investigations.

Section 5402. Background checks for purchases of explosives.

This section will amend the federal explosives laws to provide for an "instant check" of the criminal history of individuals (other than explosives licensees or permittees) who acquire explosive materials from federal explosive licensees. The procedures are virtually the same as those for firearms purchasers under the Brady law. The proposed statute provides that background check for explosives buyers will not become effective until six months after the National Instant Criminal Background Check System for instant firearms checks currently being developed becomes operational or enactment of this bill, whichever occurs later.

The amendment would also increase license and permit fees for all explosive licenses and permits. By increasing these, the amendment would help offset the administrative cost of investigating and processing license and permit applications. The authorized statutory fees have not been increased since the law was enacted in 1970.

Section 5403. Prohibiting convicted felons from possessing black powder.

This section would extend current law, which prohibits convicted felons and other dangerous persons from possessing firearms and ammunition, to prohibit such persons from possessing black powder. There is no justification for allowing such dangerous persons to possess black powder when they have been deemed, by statute, to be too dangerous to possess firearms. This is particularly true since black powder is used in the majority of bombings in the United States.

**TITLE VI--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST
INTERNATIONAL CRIME**

**Section 6001. Sharing proceeds of joint forfeiture operations
with cooperating foreign agencies.**

This proposal provides for expansion of the authorization to share forfeited property with foreign governments that cooperate in federal forfeitures. It was Section 406 of the "Forfeiture Act of 1996" which has been previously submitted to Congress. Section 981(i) of Title 18, U.S. Code, authorizes the sharing of forfeited property with foreign governments in certain circumstances. It currently applies to all civil and criminal forfeitures under 18 United States Code §§ 981 and 982, which are the forfeiture statutes for most federal offenses in Title 18. Older parallel provisions applicable only to drug cases and Customs cases appear in 21 United States Code 881(e) (1) (E) and 19 United States Code § 1616a(c) (2), respectively.

The amendment simply extends the existing sharing authority to all other criminal and civil forfeitures, including those undertaken pursuant to RICO, the Immigration and Naturalization Act, the antipornography and gambling laws, and other statutes throughout the United States Code. Because the amendment makes the parallel provisions in the drug and customs statutes unnecessary, Section 881(e) is amended to remove the redundancy.

**Section 6002. Streamlined procedures for execution of MLAT
requests.**

This section expands the authority of U.S. district courts to execute, or order execution of, foreign requests for assistance in criminal matters made pursuant to mutual legal assistance treaties (MLATs), conventions, and executive agreements such as an "antitrust mutual assistance agreement" (see, e.g., 15 United States Code § 6201 et seq.). This section applies only when the execution of such a request requires or appears to require the use of compulsory measures in more than one district. On such occasions, this section permits a judge or judge magistrate in any district involved in a multidistrict execution, or in the District of Columbia, to execute the entire request.

The U.S. generally relies on 28 United States Code § 1782 - which authorizes the practice of appointing a "commissioner" to execute a foreign request for assistance -- to provide the

framework for executing foreign requests for assistance, whether made by letter rogatory, letter of request, request pursuant to an MLAT, or other similar form of request. Section 1782 calls for execution of the foreign request in the district where the witness resides or is found, or where the evidence is located. Consequently, the Attorney General -- the authority to whom foreign requests in criminal matters are generally sent for execution -- often transmits the same request to each district in which a witness or evidence may be located for execution of that portion directly connected to the district.

This practice of transmitting a request to each and every district in which assistance requested may be found is inefficient and prone to creating delay. A majority of requests entail execution in multiple districts. Execution of a multiple district request requires substantial coordination by U.S. authorities (e.g., often documents located in different districts must be produced and analyzed before testimony from witnesses located in other districts can be profitably taken) and duplication of efforts by U.S. authorities (e.g., a judge or magistrate judge, prosecutor, and assisting agent or agents in each district must become familiar with and involved in executing the same request). In addition to the profligate expenditure of U.S. resources, the practice often results in delay, rendering the U.S. unable to provide foreign law enforcement authorities, and especially foreign treaty partners, with the level of service that the U.S. would like to receive with respect to U.S. requests. Another problem often encountered with multidistrict requests is that a U.S. Attorney's Office designated to execute a portion of a request is unable to devote the necessary resources at the time requested. If timing is critical, and it often is, execution of the request in a district involved in another aspect of the execution, or in the District of Columbia, is a reasonable solution.

This proposal provides an alternative to the current practice of executing foreign requests for assistance only in each and every district in which a witness or evidence is located. Placing authority in a U.S. district court for a district otherwise involved in the execution of a multidistrict request, or in the U.S. District Court for the District of Columbia, should dramatically improve:

- (1) the efficient use of U.S. resources to execute foreign requests that involve multiple districts, and

- (2) the execution of requests involving multiple districts in a timely manner.

Providing the U.S. District Court for the District of Columbia as an alternative venue also permits the Attorney General, with requests that require substantial allocation of resources or coordination, to provide attorneys to undertake execution in the District of Columbia in conjunction with the United States Attorney's Office for the District of Columbia.

Finally, this proposal recognizes that executing foreign requests in criminal matters by requiring witnesses to appear in different districts from those in which they are located may create some hardships for witnesses, just as it does in domestic criminal investigations and prosecutions where the U.S. prosecutor subpoenas witnesses to appear anywhere in the U.S. (i.e., wherever in the U.S. the investigation or prosecution is taking place). This proposal contemplates the same possibility of travel to comply with a commissioner's order as in a domestic criminal investigation or prosecution; however, it provides a procedure to balance the hardship against the exigencies of the request. Upon notice to either the court or the commissioner executing the request, the court will decide whether to transfer execution involving the complaining witness to that witness' district by balancing the (1) inconvenience to the witness against the (2) negative impact upon execution of the request.

Section 6003. Temporary transfer of incarcerated witnesses.

U.S. mutual legal assistance treaties generally provide a mechanism for the U.S. to send and receive persons in custody who are needed as witnesses. Current section 3508 of Title 18 was enacted in 1988 to provide authority, in the absence of such a treaty, for the Attorney General to request such persons to appear at criminal proceedings in the U.S., to maintain their custody while here, and to assure their expeditious return to the country of their incarceration once their presence at the U.S. proceeding was no longer necessary.

This proposal amends section 3508 to permit the United States, as a matter of comity and reciprocity, to send persons in custody in the U.S. abroad to appear in foreign judicial proceedings. Such transfers, when based solely on the statutory authority set out in this section, would require the consent of the person in custody as well as of the foreign state. Moreover, in the case of State prisoners, consent of the appropriate State authorities would be required as well.

These provisions carry forward the language of the current statute which makes it clear that the return of persons transferred shall occur as soon as the person's presence is no longer required and shall not require formal extradition proceedings.

Subsection (e) has been added to make it clear that persons who have consented to their transfer to the United States for purposes of appearing in a U.S. proceeding, may not transform the transfer process into a vehicle for gaining entry into the United States for purposes of seeking asylum.

Subsection (f) has been added to ensure that any decision by the Attorney General to transfer or a return a prisoner to foreign country (made after consultation with the Secretary of State) is consistent with U.S. international obligations, including those related to humanitarian concerns, and is not subject to judicial review.

In such instances, the U.S. may have been misled with respect to the person's ostensible motives in consenting to the transfer and providing the testimony, and the failure to promptly return a prisoner has immediate and direct consequences upon the foreign affairs of the United States. For example, it may significantly strain law enforcement relations between the United States and the country in which the person was incarcerated. The considerable complications which may unfold if a transferred witness can make an asylum claim are suggested by the chain of events at issue in Wang Zong Xiao v. Reno, 81 F.3d 808 (9th Cir. 1996).

For persons in the United States in pretrial detention, it is contemplated, for purposes of interpreting the bail statute, that they remain in U.S. custody while in the foreign country. However, those witnesses who are transferred with their consent also should be required to waive their right to challenge the conditions of their confinement while in the foreign country to prevent them from bringing a motion pursuant to 18 U.S. Code § 3142(f)(2) while they are abroad.

Finally, it is contemplated that a decision by the Attorney General to exercise their authority under this provision is adequate to support a finding by a court, pursuant to 18 United States Code § 3161(h)(8)(A), that the time the witness spends abroad should be excluded from calculation under the Speedy Trial Act because "the ends of justice served by taking such

action outweigh the best interest of the public and the defendant in a speedy trial."

Section 6004. Training of foreign law enforcement agencies.

By its very nature antiterrorism assistance requires that foreign law enforcement officials be provided training and advice to combat terrorism effectively. For this reason, assistance provided with funds specifically appropriated for the Department of State's antiterrorism program under Chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (the "Act") has always been authorized to be provided notwithstanding section 660 of the Act, which prohibits, with certain exceptions, the use of Foreign Assistance Act funds for police training or advice.

This provision would ensure that foreign assistance funds that are otherwise available for combatting terrorism could similarly be used notwithstanding the section 660 restriction, regardless of whether they were specifically appropriated to carry out chapter 8 of Part II of the Act. It will thus provide a significant tool for the United States in the international fight against terrorism. At the same time, adoption of this provision will clarify an issue raised in connection with recent amendments (Section 121 of P.L. 104-164) to the Foreign Assistance Act authorities that govern the antiterrorism assistance (ATA) program. In those amendments, in place of the previous provision in the ATA authorities that specifically authorized the provision of assistance notwithstanding section 660, a broader and very important authority was provided that authorizes antiterrorism assistance "notwithstanding any other provision of law that restricts assistance to foreign countries." In the context of this particular provision, the Administration has interpreted that phrase to encompass the restrictions on assistance embodied in section 660 of the Foreign Assistance Act, and this amendment will clarify this point.

Section 6005. Discretionary authority to use forfeiture proceeds to promote cooperation with foreign agencies.

This proposal amends the statute governing both the Justice Department's forfeiture fund to provide for disbursements to indemnify foreign governments, in certain circumstances, against adverse judgments that may result from the foreign government's

repatriation to the United States of assets forfeitable pursuant to U.S. law.

The proposal permits use of the funds to indemnify foreign governments that repatriate forfeitable property to the U.S. in the event they are sued domestically by third parties challenging the legality of the repatriation. The indemnification would be limited to the amount of a judgment within five years of the date that the property was repatriated to the United States and not to exceed the amount of funds deposited to the funds, plus interest earned on the fund, less any awards and equitable shares paid by the fund to the foreign government or those acting at its direction in connection with a particular case. The provision relating to the Justice Department forfeiture fund was Section 410(e) of the "Forfeiture Act of 1996" previously submitted to Congress. Under current U.S. law, there is no provision allowing the return of forfeited property to a foreign country or other entity, such as a foreign bank, that suffers foreign legal liability as the result of assisting a United States forfeiture action. This amendment authorizes the Attorney General to return the forfeited property plus interest in such circumstances. Without assurances that the property plus interest can be returned, a number of foreign jurisdictions have been unwilling to seize or repatriate property on behalf of the United States.

**TITLE VII--STREAMLINING THE INVESTIGATION AND PROSECUTION
OF INTERNATIONAL CRIMES IN U.S. COURTS**

**Section 7001. Reimbursement of state and local law enforcement
agencies in international crime cases.**

This proposal authorizes the Attorney General to designate funds to defray unusual expenses incurred by state and local jurisdictions in international extradition cases, including the costs of transporting the fugitive back to the United States and the cost of translating the extradition documents into the language of the foreign state.

State and local prosecutors are sometimes forced to abandon efforts to extradite serious offenders who have fled abroad because the prosecutors lack the resources to pay the costs of international extradition. Because extradition in cases involving violent offenders or career criminals is a national priority, this provision would authorize the Attorney General to allocate funds to pay the costs of such extraditions in serious cases if the state or local authorities certify that the financial assistance is needed. The Marshals Service spent about \$900,000 last year transporting federal fugitives back to the U.S., and it estimates that transportation of all state and local fugitives could cost twice that amount. The Marshals Service currently retrieves fugitives from abroad for state and local jurisdictions, on a reimbursable basis.

This provision is not intended to shift the entire financial burden that may be involved in international cases from states and localities to the federal government. Rather, it provides authority to assist state and localities in meeting extraordinary expenses that could not reasonably be anticipated in the local jurisdiction's ordinary budget process.

**Section 7002. Facilitating the admission of foreign records in
U.S. courts.**

This section provides a statutory basis to authenticate and admit into evidence, in federal judicial proceedings, foreign-based records of regularly conducted activity obtained pursuant to official requests. The section expands the extant statutory basis with respect to foreign business records, making records produced in accordance with the statute admissible in civil proceedings (whereas the statute currently authorizes admission only in criminal proceedings). The section also provides an independent statutory basis for foreign official records,

treating official records produced in accordance with the statute as admissible in a fashion similar to foreign business records. The section continues to incorporate elements of the Federal Rules of Evidence, especially Rule 803(6), that ensure the reliability of the foreign records and maintains the requirement of a foreign certification or similar certification provided by treaty, convention, or agreement.

To make foreign business records admissible in a civil proceeding under Federal Rules of Evidence 803(6) and 901(a)(1), a foreign custodian or other qualified witness must give testimony, either by appearing at a proceeding in the U.S. or by providing a deposition taken abroad and introduced at the U.S. proceeding, which testimony or deposition establishes that the foreign business records are authentic (901(a)(1)) and reliable (Rule 803(6)). The United States has no means by which to compel the attendance of a foreign custodian or other qualified foreign witness at a U.S. proceeding to testify. Thus, to adduce the requisite testimony, U.S. authorities must (1) rely on the prospective witness' willingness to voluntarily appear (which is rare and subject to vicissitude) or (2) attempt to depose the witness abroad. The latter process is unduly cumbersome and not available in many situations (e.g., in matters involving tax administration pursuant to tax treaties or agreements). This section provides a streamlined process for making foreign business records admissible without having to rely on the unpredictability of a foreign witness' voluntary travel to the U.S. or the unpredictable and cumbersome process of deposing the witness abroad.

Foreign official records include records of birth, vehicle registry, property transfer and liens, foreign business incorporation, and the like. Such records are routinely kept in much the same manner as business records. This section authorizes a single certification for both self-authentication and foundation for an exception to the hearsay rule similar to that currently available for foreign business records. It, likewise, will streamline the process of securing documents admissible in U.S. judicial proceedings while, at the same time, maintaining assurances of reliability.

Section 7003. Safe conduct for foreign witnesses testifying in U.S. courts.

This section will provide an independent statutory basis for a discretionary grant of "safe conduct" for witnesses in foreign countries whose testimony in the United States is needed

in connection with a state or federal criminal matter. Some foreign witnesses are reluctant to travel to the United States to testify, absent an assurance that they will not be arrested or subject to process once here. To address this problem, most U.S. mutual legal assistance treaties contain "safe conduct" provisions. Absent such a treaty provision, however, the extent to which such safe conduct may be granted is unclear. Accordingly, this provision provides clear authority to facilitate the appearance of foreign witnesses by granting safe conduct. However, the decision to grant safe conduct is to be a matter solely within the discretion of the Attorney General, and there is no intent to create any right whatsoever on the part of a witness or party to demand such a grant of safe conduct. To the extent the "safe conduct" provisions of a mutual legal assistance treaty are inconsistent with the section (e.g., by providing a different duration of the period of safe conduct), the treaty provisions will control.

Section 7004. Prohibiting fugitives from benefitting from time served abroad.

This proposal is designed so that defendants who become fugitives either by fleeing the United States, or by remaining outside the United States (in the event they are sought based on an assertion of extraterritorial jurisdiction), in order to avoid trial and punishment do not inappropriately benefit from their actions. Because U.S. prison time is now credited to fugitives after their return to the U.S. for the time during which fugitives pursue tactics in foreign countries designed to delay their return and trial in the United States, the current law unwittingly encourages fugitives to file every frivolous challenge to their rendition which is available, in order to delay the case and perhaps weaken the prosecution's case. This proposal is needed because the time consuming and complex nature of the international extradition process which involves foreign sovereigns, foreign legal laws and processes, and foreign languages, typically creates substantially longer delays than the delays that occur in the comparable domestic situation. Nationwide federal jurisdiction and interstate compacts typically result in the swift rendition of interstate fugitives.

Section 7005. Suspension of statute of limitations for collection of evidence located abroad.

Currently, ascertaining the length of time tolled is guesswork, and often the fact that "final action" has been taken in a foreign country is not known to U.S. authorities until

later, sometimes causing the statute to expire without the evidence in hand, the primary purpose of the tolling. This proposal will clarify that the time tolled runs from the date of making an official request for assistance to the date of receiving the results of that request by the authority requesting assistance.

Section 7006. Clarification of discretionary nature of payments to informants.

This provision clarifies that the authority to make payments to informants is entirely discretionary and does not create any right relating to the failure to make such payments that is enforceable in a court of law, court of equity, or otherwise.

